

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 IN RE: NATIONAL)
5 PRESCRIPTION) MDL No. 2804
6 OPIATE LITIGATION)
7 _____) Case No.
8) 1:17-MD-2804
9)
10 THIS DOCUMENT RELATES) Hon. Dan A.
11 TO ALL CASES) Polster
12)

13 TUESDAY, JULY 31, 2018

14 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
15 CONFIDENTIALITY REVIEW

16 - - -

17 Videotaped deposition of Nathan J.
18 Hartle, held at the offices of Covington &
19 Burlington, LLP, One City Center, 850 Tenth
20 Street Northwest, Washington, DC, commencing
21 at 9:04 a.m., on the above date, before
22 Carrie A. Campbell, Registered Diplomate
23 Reporter, Certified Realtime Reporter,
24 Illinois, California & Texas Certified
25 Shorthand Reporter, Missouri & Kansas
Certified Court Reporter.

- - -

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| 12 | McKesson HathiTrust, "Importation and use of opium. Hearings before the committee on Ways and Means of the House of Representatives, 61st Congress, 3d session on HR 25240, HR 25241, HR 25242, and HR 28791, December 14, 1910, and January 11, 1911" | 85 | 12 | Hartle 25 | |
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| <p>1 McKesson State of Prescription 287 Hartle 29 Drug Abuse, Gary Boggs, Olive Branch, MCK-AGMS-006-0000880 - MCK-AGMS-006-0000933 4 McKesson October 23, 2013 letter 299 Hartle 30 from William J. Ihlenfeld, II, to Laureen E. Seeger MCKMDL00409046 - MCKMDL00409047</p> <p>8 McKesson November 6, 2013, letter 300 Hartle 31 from William J. Ihlenfeld, II, to Geoffrey E. Hobart MCKMDL00409048 - MCKMDL00409049</p> <p>11 McKesson In the Matter of McKesson 302 Hartle 32 Corporation, United States Attorney's Office, Northern District of West Virginia, DEA Diversion Group - Washington Division, MCKMDL00409050 - MCKMDL00409112</p> <p>16 McKesson McKesson Corporation, 303 Hartle 33 Presentation to the US Attorney's Office, Northern District of West Virginia and DEA, March 12, 2014. Confidential/Exempt from FOIA MCKMDL00409116 - MCKMDL00409173</p> <p>22 McKesson March 20, 2014 letter 304 Hartle 34 from William J. Ihlenfeld, II, to Geoffrey E. Hobart MCKMDL00409174 - MCKMDL00409179</p> | <p>1 VIDEOGRAPHER: All right. We 2 are now on the record. 3 My name is Daniel Holmstock. I 4 am the videographer for Golkow 5 Litigation Services. 6 Today's date is July 31, 2018. 7 The time on the video screen is 8 9:04 a.m. 9 This video deposition is being 10 recorded at the law firm of Covington 11 & Burling LLP at 850 Tenth Street, 12 Northwest, in Washington, DC, in the 13 matter of In Re: National Prescription 14 Opiate Litigation. It is pending 15 before the United States District 16 Court for the Northern District of 17 Ohio, Eastern Division. 18 The deponent today is Mr. Nate 19 Hartle. 20 Will counsel please introduce 21 themselves and whom they represent. 22 MR. FARRELL: Paul Farrell on 23 behalf of the plaintiffs. 24 MR. RAFFERTY: Troy Rafferty on 25 behalf of the plaintiffs.</p> |
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| <p>1 McKesson Settlement Agreement and 305 Hartle 35 Release, MCKMDL00355322 - MCKMDL00355348</p> <p>4 McKesson Administrative Memorandum 306 Hartle 36 of Agreement, MCKMDL00355513 - MCKMDL0035526</p> <p>6 McKesson Compliance Addendum, 306 Hartle 37 MCKMDL00355477 - MCKMDL00355512</p> <p>8 McKesson Brief for Healthcare 321 Hartle 38 Distribution Management Association and National Association of Chain Drug Stores as Amici Curiae in Support of Neither Party</p> <p>12 McKesson HDMA Executive Committee 322 Hartle 39 printout from Wayback Machine</p> <p>14 McKesson Pharmacy Outlier Report, 367 Hartle 40 McKesson Corporation Opioid Shipment to Summit, OH, page 1 or 49 and page 10 of 49</p> <p>(Exhibits attached to the deposition.)</p> <p>17 CERTIFICATE.....368 18 ACKNOWLEDGMENT OF DEPONENT.....370 19 ERRATA.....371 20 LAWYER'S NOTES.....372</p> | <p>1 MR. FULLER: Mike Fuller on 2 behalf of plaintiffs. 3 MR. SUDDATH: Tom Suddath on 4 behalf of AmerisourceBergen. 5 MR. BOGLE: Brandon Bogle on 6 behalf of the plaintiffs. 7 MR. PELINI: Craig Pelini, 8 Prescription Supply. 9 MR. FAUVRE: David Fauvre on 10 behalf of the Endo and Par 11 Pharmaceutical defendants. 12 MR. LOVRIEN: Chris Lovrien, 13 Jones Day, on behalf of Walmart. 14 MR. DAVISON: Bill Davison, 15 Ropes & Gray, on behalf of 16 Mallinckrodt, LLC, and SpecGx, LLC. 17 MS. PETERSEN: Miranda 18 Petersen, Williams & Connolly, on 19 behalf of Cardinal Health, Inc. 20 MS. MCNAMARA: Colleen 21 McNamara, Williams & Connolly, on 22 behalf of Cardinal Health, Inc. 23 MR. LIVINGSTON: Scott 24 Livingston on behalf of HBC. 25 MR. O'CROININ: Conor</p> |

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| <p style="text-align: right;">Page 14</p> <p>1 O'Croinin, CVS.</p> <p>2 MS. MONAGHAN: Meghan Monaghan,</p> <p>3 Covington & Burling, on behalf of</p> <p>4 McKesson and the witness.</p> <p>5 MS. HENN: Emily Henn,</p> <p>6 Covington & Burling, on behalf of</p> <p>7 McKesson and the witness.</p> <p>8 VIDEOGRAPHER: Via telephone?</p> <p>9 MS. PEDROZA: This is Monica</p> <p>10 Pedroza on behalf of Teva</p> <p>11 Pharmaceuticals USA, Inc., Cephalon</p> <p>12 Inc., Watson Laboratories, Inc.,</p> <p>13 Actavis, LLC, and Actavis Pharma, Inc.</p> <p>14 MR. LAVELLE: John Lavelle on</p> <p>15 behalf of Rite Aid.</p> <p>16 MR. MONTMINY: Brendan Montminy</p> <p>17 on behalf Henry Schein, Inc., and</p> <p>18 Henry Schein Medical Systems, Inc.</p> <p>19 MR. AUBEL: Bill Aubel, Jackson</p> <p>20 Kelly, on behalf of Miami-Luken, Inc.</p> <p>21 MR. WEINBERGER: Pete</p> <p>22 Weinberger on behalf of the</p> <p>23 plaintiffs.</p> <p>24 VIDEOGRAPHER: The court</p> <p>25 reporter is Carrie Campbell, who will</p> | <p style="text-align: right;">Page 16</p> <p>1 deposition taken before?</p> <p>2 A. 20 years ago when I -- when I</p> <p>3 worked at a previous employer for a theft</p> <p>4 case, investigative.</p> <p>5 Q. So if you'll bear with me,</p> <p>6 we're going to do a little bit of paperwork</p> <p>7 to start -- to start off.</p> <p>8 A. Okay.</p> <p>9 Q. The first thing is, is are you</p> <p>10 aware that today you'll be testifying not as</p> <p>11 Nate Hartle but as McKesson Corporation?</p> <p>12 A. I am.</p> <p>13 (McKesson-Hartle Exhibit 1</p> <p>14 marked for identification.)</p> <p>15 QUESTIONS BY MR. FARRELL:</p> <p>16 Q. I'm going to have marked and</p> <p>17 show you McKesson 30(b)(6) Document 1, and</p> <p>18 this is the first notice of deposition that</p> <p>19 was filed in this case.</p> <p>20 Have you had a chance to review</p> <p>21 this document before today?</p> <p>22 A. I do. I have copies of this.</p> <p>23 Q. And you understand that today</p> <p>24 I'll be asking you questions about the</p> <p>25 subject matters that are in Exhibit 1, and</p> |
| <p style="text-align: right;">Page 15</p> <p>1 now administer the oath to the</p> <p>2 witness.</p> <p>3</p> <p>4 NATHAN J. HARTLE,</p> <p>5 of lawful age, having been first duly sworn</p> <p>6 to tell the truth, the whole truth and</p> <p>7 nothing but the truth, deposes and says on</p> <p>8 behalf of the Plaintiffs, as follows:</p> <p>9</p> <p>10 DIRECT EXAMINATION</p> <p>11 QUESTIONS BY MR. FARRELL:</p> <p>12 Q. Good morning.</p> <p>13 A. Good morning.</p> <p>14 Q. Please state your name.</p> <p>15 A. My name is Nathan -- I go by</p> <p>16 Nate -- John Hartle.</p> <p>17 Q. And what is your occupation,</p> <p>18 and who is your employer?</p> <p>19 A. I'm currently a vice president</p> <p>20 of regulatory affairs and compliance for</p> <p>21 McKesson Corporation.</p> <p>22 Q. How long have you been employed</p> <p>23 by McKesson?</p> <p>24 A. Since May of 2014.</p> <p>25 Q. Have you ever had your</p> | <p style="text-align: right;">Page 17</p> <p>1 McKesson has been kind enough to designate</p> <p>2 you as its spokesman to answer these</p> <p>3 questions?</p> <p>4 MS. HENN: Objection to form.</p> <p>5 THE WITNESS: I understand.</p> <p>6 (McKesson-Hartle Exhibit 2</p> <p>7 marked for identification.)</p> <p>8 QUESTIONS BY MR. FARRELL:</p> <p>9 Q. There's a second notice. We'll</p> <p>10 have that marked as Exhibit 2, and it's MCK</p> <p>11 30(b)(6)_02.</p> <p>12 Have you had a chance to review</p> <p>13 this document before today?</p> <p>14 A. I have.</p> <p>15 Q. Now, it's my understanding that</p> <p>16 McKesson has designated you to testify on</p> <p>17 certain subject matters within this document</p> <p>18 but not all.</p> <p>19 Is that your understanding?</p> <p>20 A. Correct.</p> <p>21 Q. And those numbers are numbers</p> <p>22 9, 14, 16, 17, 18, 19, 20, 21 and 22.</p> <p>23 Is that your understanding as</p> <p>24 well?</p> <p>25 A. Yes.</p> |

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1 (McKesson-Hartle Exhibit 3
2 marked for identification.)
3 QUESTIONS BY MR. FARRELL:
4 Q. The next document, just to be
5 fair, is I'm going to mark as Exhibit 3
6 McKesson's objections and responses to each
7 of these subject matters to create the whole
8 record, if anybody wants to see it. This
9 will be McKesson 30(b)(6)_3.

10 Have you had a chance to review
11 this document before today?

12 A. I have.

13 Q. It's much longer, isn't it?
14 (McKesson-Hartle Exhibit 4
15 marked for identification.)

16 QUESTIONS BY MR. FARRELL:

17 Q. And finally, I'm going to show
18 you McKesson 30(b)(6)_4, which we've also
19 labeled as Exhibit 4, which is simply the
20 redesignation of the date and location and
21 the subject matters of today's deposition.

22 Have you had a chance to review
23 this document?

24 A. I have.

25 Q. So that everybody is on the

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1 same page, what you'll notice is that there
2 are a number of different Bates stamps that
3 we'll see throughout the day. For purposes
4 of this deposition, what we've done is we've
5 created a unique and separate Bates stamp
6 just for your deposition, which can be found
7 in the top right-hand corner of, I hope, all
8 of the exhibits today. And some of them,
9 start MCK 30(b)(6) and then underscore, and
10 then the first number you'll see is the
11 sequential number of exhibits, followed by a
12 dash and then individual page numbers.

13 As we go through later today, I
14 abandon the normal sequential numbering
15 system because we're going to bounce around
16 the timeline a little bit, and instead I use
17 basically a date indicator in the top
18 right-hand corner.

19 A. Okay.

20 Q. Now, that being said for
21 everybody on the telephone, a lot of these
22 documents have been produced in this
23 litigation, and what you'll find, to the best
24 of my ability, is I've always tried to find
25 the document that contains the MDL Bates

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1 stamp in the bottom right-hand corner.
2 Sometimes it's not been all that successful
3 because sometimes the document comes from a
4 prior production and has not yet matriculated
5 or made its way over to the MDL production.

6 But nonetheless, those are the
7 three different Bates stamp numbering systems
8 that we're going to come across today, and
9 when I talk on the record, I'll try to refer
10 just to the MDL number.

11 For the people on the telephone
12 and the record and then for you and I, it'll
13 be easiest for us to use the top right-hand
14 corner.

15 A. Okay.

16 Q. When did you first learn that
17 you would be designated as the corporate
18 witness for McKesson?

19 A. I don't know the exact date,
20 but I believe within the last, say, 30 days
21 or so.

22 Q. Do you know Gary Boggs?

23 A. I do know Gary.

24 Q. Are you aware that he has been
25 designated as a 30(b)(6) designee in another

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1 litigation pending in West Virginia?

2 A. I am aware.

3 Q. Have you read the deposition of
4 McKesson from that litigation?

5 A. I have.

6 Q. Is there anything in that
7 deposition that you think is wrong or
8 factually inaccurate?

9 A. Not that I can recall.

10 Q. Are you prepared, sitting here
11 today, to adopt or affirm the representations
12 McKesson made in the West Virginia Attorney
13 General litigation?

14 MS. HENN: Objection to form.

15 THE WITNESS: Can you ask that
16 again, please?

17 QUESTIONS BY MR. FARRELL:

18 Q. So it's a little bit of a
19 Plato's Theory of the Forms right now, but
20 for all intents and purposes, McKesson is
21 sitting here in front of me today, and
22 McKesson was sitting before Mr. Lee Javins
23 from the West Virginia Attorney General
24 litigation pending in Boone County several
25 weeks ago.

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1 And so I'm trying to make the
2 connection that sitting here today McKesson
3 affirms or adopts all of its testimony from
4 the West Virginia litigation.
5 MS. HENN: Objection to form.
6 This witness is here on -- designated
7 on behalf of McKesson for the topics
8 you've indicated.
9 But you can answer the
10 question.
11 THE WITNESS: I'm not sure how
12 to answer that question.
13 QUESTIONS BY MR. FARRELL:
14 Q. Okay. So the answer is either
15 you adopt your testimony from the prior
16 litigation or you choose not to today.
17 MS. HENN: Objection to form.
18 QUESTIONS BY MR. FARRELL:
19 Q. It's okay either way.
20 A. What's that?
21 Q. It's okay either way.
22 A. Yeah.
23 Q. It's just a question of whether
24 or not I'm going to go back through some of
25 the other subject matters that Gary Boggs

Page 23

1 testified to or whether or not I can rely on
2 that sworn testimony --
3 A. Okay.
4 Q. -- to be applicable today.
5 MS. HENN: Objection to form,
6 and same comment as I made before.
7 MR. FARRELL: So, Counsel,
8 that's your second speaking objection,
9 and so I would ask that you keep your
10 comments from the record.
11 QUESTIONS BY MR. FARRELL:
12 Q. So it's okay if you do not want
13 to adopt that prior testimony. We can go
14 through it today. You may not have the
15 authority by McKesson to do so.
16 A. Yeah. Again, I'm not sure how
17 to answer that question specifically.
18 Q. It's not a problem.
19 A. Yeah. Okay.
20 Q. Can you tell me what documents
21 you reviewed to prepare for today's
22 testimony?
23 MS. HENN: I'm going to object
24 to that question as calling for
25 attorney work product and instruct the

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1 witness not to respond if you're being
2 asked, as I understand you are, for a
3 list of documents counsel showed you.
4 QUESTIONS BY MR. FARRELL:
5 Q. Okay. Have all of the
6 documents that counsel shared with McKesson
7 been disclosed in the MDL?
8 MS. HENN: Do you mean to ask
9 whether the documents Mr. Hartle has
10 used in preparing for the deposition,
11 have they been produced?
12 MR. FARRELL: Yes.
13 MS. HENN: I believe that to be
14 the case, yes.
15 QUESTIONS BY MR. FARRELL:
16 Q. Okay. So is it fair to say
17 that everything Mr. Hartle reviewed has
18 actually been produced in the litigation
19 today?
20 MS. HENN: That is my
21 understanding.
22 MR. FARRELL: The reason I ask
23 is because when I read Mr. Boggs'
24 testimony, there are references to a
25 dozen or so documents that he relied

Page 25

1 upon and discussed that have not yet
2 been disclosed in the MDL.
3 Are you aware of any documents
4 that are pending that have not been
5 produced?
6 MS. HENN: I know that we're
7 not complete with our productions, but
8 I'm not -- I don't know what those
9 documents -- what documents you're
10 referring to.
11 MR. FARRELL: So to the extent
12 that there are future documents that
13 are produced that are relevant to the
14 subject matters that are in the
15 30(b)(6) notices, we reserve our right
16 to petition the Court for good cause
17 to extend or continue this deposition.
18 MS. HENN: I note your
19 reservation of rights. We may
20 disagree on the ability of plaintiffs
21 to continue this deposition, but let's
22 continue.
23 QUESTIONS BY MR. FARRELL:
24 Q. Other than the documents
25 provided by counsel to you in preparation for

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1 this deposition, did you on your own review
 2 any documents?
 3 A. Yes, I reviewed a handful of
 4 documents that are standard with our program.
 5 Q. Okay. Can you tell me which
 6 ones they are?
 7 A. Can I ask a clarifying
 8 question? Can you repeat -- do the documents
 9 that had already -- documents that haven't
 10 been produced? Anything in addition to
 11 what --
 12 Q. That would be a swell place to
 13 start.
 14 A. You know, as I think about
 15 things that I've reviewed, it's standard
 16 operating manuals and procedures, and I think
 17 likely all that -- that stuff is part of what
 18 was produced, so I don't --
 19 Q. That's actually not a very fair
 20 way to place it because you probably haven't
 21 studied the production list yet from
 22 McKesson.
 23 A. No. No.
 24 Q. So let's talk about it in a
 25 different context.

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1 A. Okay.
 2 Q. I'm assuming at some point in
 3 time your counsel provided you some documents
 4 that they culled through based upon the legal
 5 documents, and that, arguably, has been the
 6 subject of some debate between the lawyers on
 7 whether that list is producible or not.
 8 Aside from that, did you
 9 independently go and review anything on your
 10 own, document-wise, to prepare for today?
 11 A. Document-wise? You know, I
 12 looked at files of mine, you know, just, you
 13 know, what I -- what I have in my own, you
 14 know, storage on things that I've done or
 15 projects that I've been on and reviewed just
 16 a variety of different pieces of information
 17 that personally I have.
 18 Q. Where would those files be
 19 located?
 20 A. On my computer, whether it be
 21 e-mails or in documents on my standard
 22 storage on my computer.
 23 Q. Would it be documents from
 24 MCK.NET?
 25 A. I don't think there was

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1 anything stored on MCK.NET, our intra -- the
 2 company's intra site.
 3 Q. I just wanted to say MCK.NET.
 4 A. MCK.NET, yeah.
 5 Q. Did you review documents that
 6 were on your personal computer -- that's a
 7 bad question.
 8 Did you review documents that
 9 are located on your hard drive of your
 10 computer?
 11 A. My work computer?
 12 Q. Yes.
 13 A. Yes.
 14 Q. Would those documents also have
 15 been on the server?
 16 A. Could you clarify "server"?
 17 Q. Yeah. So in general, when you
 18 have a network of computers, sometimes
 19 there's a central repository where
 20 everybody's computer can pull up files from,
 21 and then there's also on your own computer a
 22 hard drive that nobody else can look at,
 23 except you, from your computer station.
 24 A. I understand that, sir, but
 25 I -- you know, in terms of the shared

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1 repository that we use in regulatory affairs,
 2 yes, there's documents stored on there that
 3 I've reviewed.
 4 Q. What about documents on your
 5 personal hard drive on your office computer?
 6 A. Yes, I store documents on my
 7 personal office computer.
 8 Q. And those documents you
 9 reviewed prior to today's deposition?
 10 MS. HENN: Objection to form.
 11 THE WITNESS: There are some
 12 documents.
 13 QUESTIONS BY MR. FARRELL:
 14 Q. Did you rely on any of those
 15 documents or did any of those documents
 16 refresh your recollection about the subject
 17 matters of today's deposition?
 18 A. I used --
 19 MS. HENN: Objection to form.
 20 Go ahead.
 21 THE WITNESS: I used them to
 22 refresh.
 23 QUESTIONS BY MR. FARRELL:
 24 Q. Okay. How about e-mails? Did
 25 you go and review any old e-mails?

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1 A. I may have looked at a few
2 e-mails.

3 Q. Do any of them particularly
4 stand out?

5 A. No.

6 Q. Who would the e-mails have come
7 from that you were reviewing?

8 MS. HENN: Objection to form.

9 THE WITNESS: Could be a
10 variety of people. I don't recall,
11 you know, specific e-mails that I
12 looked at. Could be from my team or
13 part of a project or...

14 QUESTIONS BY MR. FARRELL:

15 Q. And I'm sorry if I asked this
16 before. How long have you been with
17 McKesson?

18 A. Since 2014. May of 2014.

19 Q. You understand that some of the
20 subject matters today may predate 2014?

21 A. I do understand that.

22 Q. Other than documents provided
23 by your lawyer, where did you find documents
24 that predated 2014?

25 MS. HENN: Objection to form.

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1 THE WITNESS: They would be on
2 our shared drive or our space where
3 regulatory affairs -- it's called the
4 R drive. That's where we would share
5 information.

6 QUESTIONS BY MR. FARRELL:

7 Q. Okay. Other than the R drive,
8 where else would we find those documents?

9 MS. HENN: Objection to form.

10 THE WITNESS: I'm not sure -- I
11 don't believe I accessed anything else
12 outside of the hard drive. I know
13 there's other sites, a share point
14 site in the past, but I believe mine
15 were all from the R drive.

16 QUESTIONS BY MR. FARRELL:

17 Q. Have you reviewed any documents
18 or seen any documents that predate 2006?

19 A. I have.

20 Q. And did you -- where did those
21 documents come from?

22 I'll make it easier. Did those
23 documents come from the lawyers?

24 A. I have some in the -- the -- my
25 preparation over the past few days, but also

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1 I do have documents, as I joined McKesson,
2 that I reviewed and had stored either on my
3 personal computer, on my work computer, or
4 the R drive that predate 2006.

5 Q. All right. So we're going to
6 jump into some topics.

7 A. Okay.

8 Q. Have you read the Masters
9 Pharmaceutical case?

10 A. Not for a while. I read it
11 when it first came out, you know.

12 Q. That was June of 2017.

13 So when I start asking
14 questions, I'm going to do my very best to
15 keep envisioning McKesson's logo sitting in
16 front of me instead of Nate Hartle.

17 A. Okay.

18 Q. So let me ask a different way.

19 Is McKesson aware of the
20 publishing of the Masters Pharmaceutical
21 case?

22 MS. HENN: Objection to form.

23 THE WITNESS: We are.

24 QUESTIONS BY MR. FARRELL:

25 Q. You're aware that in Masters

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1 Pharmaceutical there was a discussion of the
2 reporting requirement?

3 A. I am.

4 Q. And does McKesson acknowledge
5 that is the law in the United States?

6 MS. HENN: Objection to form.

7 THE WITNESS: Could you ask
8 that question again, please? Do I --

9 QUESTIONS BY MR. FARRELL:

10 Q. Sure.

11 I'm jumping out of order a
12 little bit, but I'm going to see if I can
13 actually grab the folder for you.

14 We're not going to premark this
15 because that will absolutely mess up my
16 numbering system, but the top right-hand
17 corner it's Bates stamped 2017_06_30.

18 And I apologize for the
19 flopping of the documents across the big
20 table.

21 This is Masters Pharmaceutical.
22 Has McKesson read this document?

23 MS. HENN: Objection to form.

24 THE WITNESS: I believe that
25 several have read this document.

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1 QUESTIONS BY MR. FARRELL:
 2 Q. Have you read this document in
 3 preparation for today's deposition?
 4 A. Did I have it in the past?
 5 Q. No.
 6 In preparation for today's
 7 deposition, have you read this as McKesson's
 8 corporate designee?
 9 A. I did not read this specific
 10 right before the deposition.
 11 Q. So it's not -- it's not a
 12 memory contest --
 13 A. Right.
 14 Q. -- and that's why I brought the
 15 documents --
 16 A. Right.
 17 Q. -- so that -- so that we can
 18 talk about some of the subject matters.
 19 The first thing I'd like you to
 20 do is turn to the Bates stamp page 7. And
 21 you'll notice that there are two columns, and
 22 in the bottom right-hand corner the paragraph
 23 heading number 2.
 24 Do you see that?
 25 A. Yes.

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1 Q. And midway down through, you'll
 2 see that in the parentheses it says the
 3 "reporting requirement."
 4 A. I see that.
 5 Q. Do you see it?
 6 A. I do.
 7 Q. And then immediately after
 8 that, it describes what the reporting
 9 requirement is. And I don't know if you do
 10 better reading it aloud or reading it to
 11 yourself.
 12 Would you like me to read it,
 13 or would you like to read it?
 14 A. I can read it.
 15 Q. All right. Starting with "the
 16 reporting requirement is a relatively modest
 17 one," will you finish the sentence?
 18 A. I read that sentence.
 19 Q. Okay. Now, will you read it
 20 aloud?
 21 A. "It requires only that a
 22 distributor provide basic information about
 23 certain orders to DEA so that DEA
 24 investigators in the field can aggregate
 25 reports from every point along the legally

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1 regulated supply chain and use the
 2 information to ferret out potentially illegal
 3 activity."
 4 Q. Does McKesson acknowledge that
 5 it has a duty under the reporting
 6 requirement?
 7 MS. HENN: Objection to form.
 8 THE WITNESS: Acknowledge that
 9 we -- we, as part of the designing and
 10 operating the suspicious order system,
 11 have to report suspicious orders.
 12 QUESTIONS BY MR. FARRELL:
 13 Q. That wasn't my question.
 14 My question is: Does McKesson
 15 acknowledge the reporting requirement, as you
 16 just read aloud, is a duty owed by McKesson
 17 under the federal regulations and United
 18 States Code?
 19 MS. HENN: Objection to form.
 20 THE WITNESS: And it's our
 21 responsibility to report suspicious
 22 orders.
 23 QUESTIONS BY MR. FARRELL:
 24 Q. So the answer to my question is
 25 yes --

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1 A. Yes.
 2 Q. -- no, or I don't know.
 3 MS. HENN: Objection to form.
 4 THE WITNESS: It is our -- yes.
 5 QUESTIONS BY MR. FARRELL:
 6 Q. Okay. Now, I want you to go
 7 down, and if you actually flip the page,
 8 we'll cheat to the end, and it's the end of
 9 the first sentence in the top left-hand
 10 corner. In parentheses it says, "The
 11 shipping requirement."
 12 Do you see that?
 13 A. Where am I looking again?
 14 Sorry.
 15 Q. Very top left-hand corner
 16 there's a --
 17 A. Okay. Shipping requirement. I
 18 see that.
 19 Q. All right. Now what we're
 20 going to do is go to the beginning of that
 21 sentence on the previous page, and it's the
 22 last full sentence. It starts with "once a
 23 distributor has."
 24 Do you see that sentence?
 25 A. I see that.

1 Q. Now I'm going to give you a
2 chance to read it without -- and digest it
3 for a second.

4 A. I've read that.

5 Q. All right. Now, can you read
6 it aloud for the record?

7 A. "Once a distributor has
8 reported a suspicious order, it must make one
9 of two choices, decline to ship the order or
10 conduct some due diligence, and if it is able
11 to determine that the order is not likely to
12 be diverted into illegal channels, ship the
13 order."

14 Q. Does McKesson acknowledge that
15 the shipping requirement is a duty it owes
16 under the United States Code and the Code of
17 Federal Regulations?

18 MS. HENN: Objection to form.

19 THE WITNESS: Yes.

20 (McKesson-Hartle Exhibit 5
21 marked for identification.)

22 QUESTIONS BY MR. FARRELL:

23 Q. We'll come back to this later.

24 All right. The next document
25 we're going to reference is MCK 30(b)(6)_5.

1 And so to make this easy so I don't have to
2 say all those letters and numbers, as we move
3 forward I'm just going to refer to it exhibit
4 such-and-such.

5 A. Okay.

6 Q. And when I do, we're talking
7 about the exhibit for this deposition.

8 I'm going to represent to you
9 that there are four pages to this exhibit,
10 that you won't find this exhibit anywhere on
11 the Internet because I made them myself. I'm
12 going to give you a second to flip through
13 them, and what I'm going to represent to you
14 is that these are four different provisions
15 from four different United States Code
16 provisions. So I'll give you a second to
17 review.

18 A. Okay.

19 Q. So the first thing I want you
20 to take note of on Exhibit 5, page 1, is the
21 top left-hand corner, which is the great seal
22 of our United States Congress.

23 And if you look under the
24 United States Code, Title 21, for food and
25 drugs, under Chapter 13, Drug Abuse

1 Prevention and Control, Subchapter 1, Control
2 and Enforcement, Part A, Introductory
3 Provisions, this is the beginning of the
4 Controlled Substances Act.

5 McKesson is aware of and
6 acknowledges that its role in the chain of
7 distribution of opioids is governed by the
8 Controlled Substances Act, agreed?

9 MS. HENN: Objection to form.

10 THE WITNESS: Yes.

11 QUESTIONS BY MR. FARRELL:

12 Q. Now, I'm going to have you look
13 down all the way at all those letters and
14 numbers at the very bottom, Public Law
15 91-513, Title 2. And the date there is
16 October 27, 1970.

17 McKesson is aware that the
18 Controlled Substances Act has been in force
19 and effect since 1970, correct?

20 MS. HENN: Objection to form.

21 THE WITNESS: Correct.

22 QUESTIONS BY MR. FARRELL:

23 Q. So Section 801, which is on the
24 first page, is Congressional findings and
25 declarations regarding controlled substances.

1 Do you see that?

2 A. I do.

3 Q. And it says, "The Congress
4 agrees makes the following findings and
5 declarations."

6 And to be fair, paragraph 1,
7 will you read it aloud?

8 A. "Many of the drugs included
9 within this subchapter have a useful and
10 legitimate medical purpose and are necessary
11 to maintain the health and general welfare of
12 the American people."

13 Q. Does McKesson acknowledge and
14 agree with that finding?

15 MS. HENN: Objection to form.

16 THE WITNESS: Yes.

17 QUESTIONS BY MR. FARRELL:

18 Q. Now, will you read Section 2
19 aloud, please?

20 A. "The illegal importation,
21 manufacture, distribution and possession and
22 improper use of controlled substances have
23 substantially and detrimentally effect --
24 have a substantial and detrimental effect on
25 the health and general welfare of the

| | |
|--|--|
| <p style="text-align: right;">Page 42</p> <p>1 American people."</p> <p>2 Q. Does McKesson acknowledge and</p> <p>3 agree with those findings?</p> <p>4 MS. HENN: Objection to form.</p> <p>5 THE WITNESS: Yes.</p> <p>6 QUESTIONS BY MR. FARRELL:</p> <p>7 Q. So you'll notice in paragraph 2</p> <p>8 it includes distribution, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And McKesson is engaged in the</p> <p>11 distribution business, agreed?</p> <p>12 A. We are.</p> <p>13 Q. And that if they do not follow</p> <p>14 the law as provided by the US code and the</p> <p>15 Code of Federal Regulations, it has a</p> <p>16 substantial and detrimental effect on the</p> <p>17 health and general welfare of the American</p> <p>18 people, agreed?</p> <p>19 MS. HENN: Objection to form.</p> <p>20 THE WITNESS: Could you restate</p> <p>21 that question for me, please?</p> <p>22 QUESTIONS BY MR. FARRELL:</p> <p>23 Q. Yeah.</p> <p>24 You agree with paragraph 2 --</p> <p>25 A. Right.</p> | <p style="text-align: right;">Page 44</p> <p>1 A. That's what it says, correct.</p> <p>2 Q. Does McKesson agree and</p> <p>3 acknowledge that finding?</p> <p>4 MS. HENN: Objection to form.</p> <p>5 THE WITNESS: Yes.</p> <p>6 QUESTIONS BY MR. FARRELL:</p> <p>7 Q. Now, if you flip to page 2,</p> <p>8 this is section A 12 of the Controlled</p> <p>9 Substances Act, and what it says is it places</p> <p>10 drugs into one of several categories.</p> <p>11 Is McKesson aware of the</p> <p>12 scheduling of controlled substances?</p> <p>13 A. We are.</p> <p>14 Q. Okay. And what we're dealing</p> <p>15 with in this litigation primarily today are</p> <p>16 Schedule II drugs, correct?</p> <p>17 A. Correct.</p> <p>18 Q. Now, there was a period of time</p> <p>19 when certain hydrocodone combination products</p> <p>20 were Schedule III, but they've since been</p> <p>21 reclassified as Schedule II, agreed?</p> <p>22 A. Agreed.</p> <p>23 Q. And McKesson picked up a book</p> <p>24 of business when that happened on the HCPs,</p> <p>25 agreed?</p> |
| <p style="text-align: right;">Page 43</p> <p>1 Q. -- as McKesson's</p> <p>2 representative, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And what it says is that the</p> <p>5 illegal, and one of the words is</p> <p>6 distribution, of controlled substances has a</p> <p>7 substantial and detrimental effect on the</p> <p>8 health and general welfare of the American</p> <p>9 people.</p> <p>10 I'm asking you if McKesson</p> <p>11 agrees and acknowledges with this finding by</p> <p>12 Congress in 1970.</p> <p>13 MS. HENN: Objection to form.</p> <p>14 THE WITNESS: Yes, that the</p> <p>15 illegal distribution can -- could</p> <p>16 potentially have an impact on the</p> <p>17 American --</p> <p>18 QUESTIONS BY MR. FARRELL:</p> <p>19 Q. Well, it doesn't say</p> <p>20 "potential" in paragraph 2, does it?</p> <p>21 A. It doesn't.</p> <p>22 Q. It says that if you break the</p> <p>23 law, it has a substantial and detrimental</p> <p>24 effect on the health and general welfare of</p> <p>25 the American people.</p> | <p style="text-align: right;">Page 45</p> <p>1 MS. HENN: Objection to form.</p> <p>2 THE WITNESS: Can you rephrase</p> <p>3 the book of business and the question</p> <p>4 a little bit?</p> <p>5 QUESTIONS BY MR. FARRELL:</p> <p>6 Q. Yeah, that was a little too</p> <p>7 country.</p> <p>8 Is McKesson aware that its</p> <p>9 sales of hydrocodone combination products</p> <p>10 rose following the reclassification of those</p> <p>11 opioids from Schedule III to Schedule II?</p> <p>12 A. Yes.</p> <p>13 Q. So nonetheless, when we're</p> <p>14 talking about these products, I'm referencing</p> <p>15 Schedule II for today.</p> <p>16 A. Understood.</p> <p>17 Q. So the Schedule II has a</p> <p>18 definition, does it not, under the United</p> <p>19 States Code?</p> <p>20 A. It does.</p> <p>21 Q. There's three aspects to it.</p> <p>22 Do you see those three aspects?</p> <p>23 A. I do.</p> <p>24 Q. Could you read aspect A?</p> <p>25 A. "The drug or other substance</p> |

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1 has a high potential for abuse."
2 Q. McKesson is aware since 1970
3 that it was engaging in business of
4 distributing Schedule II controlled
5 substances which have a high potential for
6 abuse, agreed?
7 A. Agreed.
8 Q. And you agree that the opioids,
9 whether they're Schedule II or formerly
10 Schedule III, are drugs that have a high
11 potential for abuse?
12 A. Agree.
13 Q. McKesson knows this?
14 A. We do.
15 Q. And McKesson has known this
16 from the very beginning of their decision to
17 distribute controlled substances?
18 A. Agreed.
19 Q. Would you read paragraph B,
20 please?
21 A. "The drug or other substance
22 has a currently accepted medical use and
23 treatment in the United States or a currently
24 accept medical use with severe restrictions."
25 Q. Does McKesson agree and

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1 acknowledge with this statement from
2 Congress?
3 MS. HENN: Objection to form.
4 THE WITNESS: Yes.
5 QUESTIONS BY MR. FARRELL:
6 Q. Now, read paragraph C, please.
7 A. "Abuse of a drug or other
8 substances may lead to severe psychological
9 or physical dependence."
10 Q. Does McKesson agree and
11 acknowledge this finding?
12 MS. HENN: Objection to form.
13 THE WITNESS: Yes.
14 QUESTIONS BY MR. FARRELL:
15 Q. So just to be clear, when we're
16 talking about controlled substances in this
17 litigation, we're talking about opiates and
18 opioids, agreed?
19 A. Agreed.
20 Q. And what these are, are these
21 are derivatives of opium in the form of a
22 pill, agreed?
23 MS. HENN: Objection to form.
24 THE WITNESS: It's multiple
25 formulations but, yes.

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1 QUESTIONS BY MR. FARRELL:
2 Q. What we start with is we start
3 with the poppy plant, agreed?
4 MS. HENN: Objection to form.
5 THE WITNESS: Agreed.
6 QUESTIONS BY MR. FARRELL:
7 Q. Well -- and it's okay if -- I'm
8 just trying to figure out what McKesson
9 knows.
10 McKesson distributes pills from
11 a manufacturer to pharmacies. That's what
12 they do, yes?
13 A. Correct.
14 Q. The pills that you're
15 distributing, you're aware they originally
16 come from the poppy plant?
17 MS. HENN: Objection to form.
18 Outside the scope.
19 THE WITNESS: I'm not an expert
20 in the medical field and design, but I
21 understand that, yes.
22 QUESTIONS BY MR. FARRELL:
23 Q. Does McKesson acknowledge or
24 appreciate that what they're selling are
25 opium pills?

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1 MS. HENN: Objection to form.
2 THE WITNESS: We understand
3 how -- what's in the pills, so, yes.
4 QUESTIONS BY MR. FARRELL:
5 Q. Okay. So the opium can be
6 manipulated by the manufacturers to be
7 opiate-like? Opiate-like, right? There's
8 opiates and opioid, or opiate-like, and
9 that's how you get hydrocodone and oxycodone
10 and all the different types of opium pills,
11 agreed?
12 A. Correct.
13 MS. HENN: Objection to form.
14 QUESTIONS BY MR. FARRELL:
15 Q. So when I say "opium pills,"
16 what I'm talking about is the big
17 classification of all of these pills derived
18 from the poppy plant.
19 Is that fair?
20 A. Understood.
21 Q. All right. And when we talk
22 about any of the individual pills, whether
23 it's hydrocodone or oxycodone, those all fall
24 within the opium pill umbrella, right?
25 MS. HENN: Objection to form.

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|---|--|
| <p style="text-align: right;">Page 50</p> <p>1 THE WITNESS: Yes.</p> <p>2 QUESTIONS BY MR. FARRELL:</p> <p>3 Q. So when McKesson is</p> <p>4 distributing opium pills, it knows and</p> <p>5 understands that these pills have a high</p> <p>6 potential for abuse?</p> <p>7 A. We do.</p> <p>8 Q. Now, they also -- you also --</p> <p>9 McKesson understands that these pills do have</p> <p>10 an accepted medical use in treatment, but</p> <p>11 they have severe restrictions, agreed?</p> <p>12 MS. HENN: Objection to form.</p> <p>13 THE WITNESS: We understand the</p> <p>14 language, yes.</p> <p>15 QUESTIONS BY MR. FARRELL:</p> <p>16 Q. You understand the language of</p> <p>17 paragraph B?</p> <p>18 A. Right.</p> <p>19 Q. Opium pills have a place in</p> <p>20 current medical practice?</p> <p>21 A. Yes.</p> <p>22 Q. But abusing opium pills may</p> <p>23 lead to severe psychological and physical</p> <p>24 dependence?</p> <p>25 A. Correct.</p> | <p style="text-align: right;">Page 52</p> <p>1 of this?</p> <p>2 A. I do.</p> <p>3 Q. What is the date?</p> <p>4 A. October 27, 1970.</p> <p>5 Q. Does McKesson acknowledge that</p> <p>6 Congress gave the United States Attorney</p> <p>7 General the authority to promulgate rules</p> <p>8 regarding the distribution of opium pills?</p> <p>9 MS. HENN: Objection to form.</p> <p>10 THE WITNESS: Yes.</p> <p>11 QUESTIONS BY MR. FARRELL:</p> <p>12 Q. Now let's flip to the next</p> <p>13 page. This is the -- this is where we'll be</p> <p>14 spending most of our time today. This is</p> <p>15 page 4, Section 823.</p> <p>16 This is from the United States</p> <p>17 Code, and it includes, as you'll see down in</p> <p>18 paragraph 1, what Congress has said is</p> <p>19 McKesson's duty. I'd like you to first read</p> <p>20 that to yourself.</p> <p>21 A. I've read it.</p> <p>22 Q. All right. Does McKesson</p> <p>23 acknowledge that it has a duty to maintain</p> <p>24 effective control against diversion of opium</p> <p>25 pills as mandated by Congress?</p> |
| <p style="text-align: right;">Page 51</p> <p>1 Q. McKesson understands and</p> <p>2 acknowledges this?</p> <p>3 A. Yes.</p> <p>4 Q. And that's why the unlawful</p> <p>5 distribution of these opium pills, relating</p> <p>6 back to page 1, has a substantial and</p> <p>7 detrimental effect on the health and general</p> <p>8 welfare of the American people.</p> <p>9 Does McKesson acknowledge that?</p> <p>10 MS. HENN: Objection to form.</p> <p>11 THE WITNESS: Yes.</p> <p>12 QUESTIONS BY MR. FARRELL:</p> <p>13 Q. Now we're going to flip to</p> <p>14 page 3, which is Section 821, rules and</p> <p>15 regulations.</p> <p>16 Will you please read this</p> <p>17 aloud?</p> <p>18 A. "The Attorney General is</p> <p>19 authorized to promulgate rules and</p> <p>20 regulations and to charge reasonable fees</p> <p>21 relating to the registration and control of</p> <p>22 the manufacture, distribution and dispensing</p> <p>23 of controlled substances and to listed</p> <p>24 chemicals."</p> <p>25 Q. All right. Do you see the date</p> | <p style="text-align: right;">Page 53</p> <p>1 MS. HENN: Objection to the</p> <p>2 form.</p> <p>3 THE WITNESS: We do.</p> <p>4 (McKesson-Hartle Exhibit 6</p> <p>5 marked for identification.)</p> <p>6 QUESTIONS BY MR. FARRELL:</p> <p>7 Q. Now this is a much bigger</p> <p>8 document, but I promise we won't go through</p> <p>9 every page.</p> <p>10 This is going to be marked as</p> <p>11 Exhibit 6 in the bottom right-hand corner,</p> <p>12 and in the top right-hand corner it's MCK</p> <p>13 30(b)(6)_6.</p> <p>14 For our fans following on the</p> <p>15 telephone, this is the Congressional history</p> <p>16 that can be found at 91-1444. It is Public</p> <p>17 Law 91-513.</p> <p>18 Do you remember when we were</p> <p>19 looking at the United States Code and it</p> <p>20 referenced Public Law 91-513 from Exhibit 5?</p> <p>21 A. Yes.</p> <p>22 Q. This is that document, I'll</p> <p>23 represent to you.</p> <p>24 A. Okay.</p> <p>25 Q. And what this is, is this is</p> |

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| <p style="text-align: right;">Page 54</p> <p>1 the Congressional history of all those codes 2 that we just walked through. And I'm not 3 going to ask you to read the entire document 4 because I've highlighted certain sections for 5 you.</p> <p>6 The first thing I'd like you to 7 do is I'd like for you to turn to Bates stamp 8 page 5. And while you read the document to 9 yourself, I'm going to read it out loud to 10 save you some time.</p> <p>11 A. Okay.</p> <p>12 Q. Under Title 2, Control and 13 Enforcement, it states, "The bill provides 14 for control by the Justice Department of 15 problems related to drug abuse through 16 registration of manufacturers, wholesalers, 17 retailers and all others in the legitimate 18 distribution chain and makes transactions 19 outside the legitimate distribution chain 20 illegal."</p> <p>21 Does McKesson acknowledge this 22 finding from Congress?</p> <p>23 MS. HENN: Objection to form.</p> <p>24 THE WITNESS: Yes.</p> <p>25</p> | <p style="text-align: right;">Page 56</p> <p>1 for a minute.</p> <p>2 McKesson understands that in 3 1970 Congress created a closed system, 4 agreed?</p> <p>5 A. Agree.</p> <p>6 Q. What a closed system means is 7 that laissez-faire economics don't apply, 8 agreed?</p> <p>9 MS. HENN: Objection to form.</p> <p>10 THE WITNESS: Have to refresh 11 my memory on laissez-faire economics.</p> <p>12 QUESTIONS BY MR. FARRELL:</p> <p>13 Q. It's just a fancy French word 14 for "hands off." The government is 15 intervening in the marketplace of the chain 16 of distribution for opium pills, agreed?</p> <p>17 A. For controlled substances.</p> <p>18 Q. Well, for all controlled 19 substances --</p> <p>20 A. Correct.</p> <p>21 Q. -- but today we're talking 22 about opium pills.</p> <p>23 A. Understood.</p> <p>24 Q. So the controlled substances 25 are in a chain of distribution that are</p> |
| <p style="text-align: right;">Page 55</p> <p>1 QUESTIONS BY MR. FARRELL:</p> <p>2 Q. I'm going to have you to turn 3 to Bates stamp page 8. And again, these are 4 my highlights. Congress didn't highlight 5 this in 1970; Paul Junior did. So while you 6 read it, I'm going to read it out loud.</p> <p>7 "The bill was designed to 8 improve the administration and regulation of 9 the manufacturing, distribution and 10 dispensing of controlled substances by 11 providing for a closed system of drug 12 distribution for legitimate handlers of such 13 drugs. Such a closed system should 14 significantly reduce the widespread diversion 15 of these drugs out of the legitimate channels 16 into the illicit market, while at the same 17 time providing the legitimate drug industry 18 with a unified approach to narcotic and 19 dangerous drug control."</p> <p>20 Does McKesson acknowledge the 21 truth of this finding by Congress?</p> <p>22 MS. HENN: Objection to form.</p> <p>23 THE WITNESS: Yes.</p> <p>24 QUESTIONS BY MR. FARRELL:</p> <p>25 Q. So let's just talk about this</p> | <p style="text-align: right;">Page 57</p> <p>1 closed off to the rest of the marketplace. 2 McKesson acknowledges that?</p> <p>3 MS. HENN: Objection to form.</p> <p>4 THE WITNESS: Correct. It's a 5 closed system.</p> <p>6 QUESTIONS BY MR. FARRELL:</p> <p>7 Q. And in order to participate in 8 the closed system, you have to be one of the 9 select few that gets a registration 10 certificate from the DEA, agreed?</p> <p>11 A. Agreed.</p> <p>12 Q. And the reason Congress did 13 this was to reduce diversion. Does McKesson 14 acknowledge that?</p> <p>15 MS. HENN: Objection to form.</p> <p>16 THE WITNESS: Yes, I believe 17 that was the overall intent.</p> <p>18 QUESTIONS BY MR. FARRELL:</p> <p>19 Q. So it's creating rules to 20 prevent diversion to the best of their 21 ability. McKesson acknowledges that fact?</p> <p>22 MS. HENN: Objection to form.</p> <p>23 THE WITNESS: Yes.</p> <p>24 QUESTIONS BY MR. FARRELL:</p> <p>25 Q. Because if McKesson doesn't</p> |

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1 follow the law, then diversion is likely.
 2 You agree with that statement?
 3 MS. HENN: Objection to form.
 4 THE WITNESS: I don't know if
 5 I'd say -- always characterize it as
 6 likely all the time, but diversion can
 7 happen.
 8 QUESTIONS BY MR. FARRELL:
 9 Q. Okay. Well, in this specific
 10 provision, the United States Congress passed
 11 a law to close the system of distribution and
 12 enact laws to reduce the widespread diversion
 13 of these drugs. You agree with that? That's
 14 the purpose of this law?
 15 MS. HENN: Objection to form.
 16 THE WITNESS: Yes.
 17 QUESTIONS BY MR. FARRELL:
 18 Q. So the idea here is that -- to
 19 close the system of distribution so that we
 20 keep these dangerous opium pills inside the
 21 legitimate market for medical care, agreed?
 22 A. Agreed.
 23 Q. And that's why we have these
 24 laws enacted, so that we can do our best to
 25 keep these drugs to the patients that need

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1 them, agreed?
 2 A. Agreed.
 3 Q. And if you don't follow those
 4 laws, then what happens is we have diversion
 5 into the illicit market?
 6 MS. HENN: Objection to form.
 7 THE WITNESS: That can happen
 8 if you don't follow those laws.
 9 QUESTIONS BY MR. FARRELL:
 10 Q. And that's the reason Congress
 11 created the laws as stated in this finding?
 12 MS. HENN: Objection to form.
 13 THE WITNESS: Correct.
 14 QUESTIONS BY MR. FARRELL:
 15 Q. Next I'm going to have you flip
 16 to page 11. And I just highlighted one
 17 sentence in here. And it says, "The price
 18 for participation in this traffic," which is
 19 illicit drug trafficking, "should be
 20 prohibitive."
 21 Do you see that sentence?
 22 A. I see that.
 23 Q. Does McKesson acknowledge that?
 24 MS. HENN: Objection to form.
 25

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1 QUESTIONS BY MR. FARRELL:
 2 Q. Does McKesson acknowledge that
 3 sentence to be true?
 4 MS. HENN: Objection to form.
 5 THE WITNESS: Yes.
 6 QUESTIONS BY MR. FARRELL:
 7 Q. It just makes sense, right? If
 8 you're going to punish somebody and the
 9 punishment isn't very severe, they're likely
 10 to what?
 11 MS. HENN: Objection to form.
 12 THE WITNESS: To do it again.
 13 QUESTIONS BY MR. FARRELL:
 14 Q. Why?
 15 A. There's no penalty or
 16 accountability.
 17 Q. And so by making the penalty
 18 prohibitive, what does it do?
 19 MS. HENN: Objection to form.
 20 THE WITNESS: Could you ask the
 21 question in a -- again? What --
 22 QUESTIONS BY MR. FARRELL:
 23 Q. If you make the penalty
 24 prohibitive, then what happens?
 25 MS. HENN: Objection to form.

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1 MR. MONTMINY: Objection to
 2 form. Calls for speculation. This is
 3 Brandon Montminy for Henry Schein.
 4 MS. HENN: And just to note for
 5 everyone's knowledge, many of you know
 6 this, but in the deposition protocol,
 7 one defendant's objection counts for
 8 all defendants, so there's no need to
 9 do depositions {sic} if I'm done them.
 10 But if on the phone you can't hear me,
 11 I can try to speak up.
 12 MR. FARRELL: So that means
 13 you're not allowed to object to this
 14 question because Henry Schein objected
 15 to it.
 16 MS. HENN: I already did, I'm
 17 afraid to say. There are two.
 18 QUESTIONS BY MR. FARRELL:
 19 Q. So back to my original
 20 question.
 21 A. Yeah, could you put it in
 22 simpler terms in --
 23 Q. Yeah. Let me put it --
 24 A. Just so I know.
 25 Q. -- in other terms.

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| <p style="text-align: right;">Page 62</p> <p>1 A. Yeah.</p> <p>2 Q. Let's say that a speeding</p> <p>3 ticket is a dollar. What would happen across</p> <p>4 America if a speeding ticket was a dollar?</p> <p>5 MS. HENN: Objection to form.</p> <p>6 QUESTIONS BY MR. FARRELL:</p> <p>7 Q. What would happen?</p> <p>8 A. It wouldn't hold the same</p> <p>9 weight or it wouldn't -- it may not deter</p> <p>10 people from speeding.</p> <p>11 Q. What if the speeding ticket was</p> <p>12 a million dollars? What would that do?</p> <p>13 MS. HENN: Objection to form.</p> <p>14 THE WITNESS: I'm just</p> <p>15 guessing, but likely people would not</p> <p>16 speed.</p> <p>17 QUESTIONS BY MR. FARRELL:</p> <p>18 Q. Because the penalty would be</p> <p>19 prohibitive, agreed?</p> <p>20 A. Agreed.</p> <p>21 Q. Like not to be cute, but</p> <p>22 McKesson was fined \$13 million in 2008 and</p> <p>23 then was fined again in 2017 \$150 million.</p> <p>24 Do you think that the second</p> <p>25 fine was intended to be more prohibitive than</p> | <p style="text-align: right;">Page 64</p> <p>1 from legitimate channels into illegitimate</p> <p>2 channels.</p> <p>3 Does McKesson acknowledge that?</p> <p>4 MS. HENN: Objection to form.</p> <p>5 THE WITNESS: Yes.</p> <p>6 QUESTIONS BY MR. FARRELL:</p> <p>7 Q. Flip to page 27, the very next</p> <p>8 page.</p> <p>9 It says, "The legislation</p> <p>10 provides that all persons engaged in a</p> <p>11 legitimate distribution chain involving drugs</p> <p>12 included in one of the schedules under the</p> <p>13 bill must be registered with the Attorney</p> <p>14 General."</p> <p>15 So again, this is bringing full</p> <p>16 circle the authority of the Attorney General</p> <p>17 and the Department of Justice to promulgate</p> <p>18 rules for those that wish to engage in the</p> <p>19 closed system of distribution for controlled</p> <p>20 substances, and McKesson acknowledges that?</p> <p>21 MS. HENN: Objection to form.</p> <p>22 THE WITNESS: Yes.</p> <p>23 QUESTIONS BY MR. FARRELL:</p> <p>24 Q. Now flip to page 34. And I</p> <p>25 would like for you to please read that</p> |
| <p style="text-align: right;">Page 63</p> <p>1 the first fine?</p> <p>2 MS. HENN: Objection to form.</p> <p>3 THE WITNESS: I believe so.</p> <p>4 QUESTIONS BY MR. FARRELL:</p> <p>5 Q. All right. Now, let's go to</p> <p>6 Bates stamp page 26.</p> <p>7 And it says, "Titles 2 and 3 of</p> <p>8 the bill deal with law enforcement aspect of</p> <p>9 drug abuse and provide authority for the</p> <p>10 Department of Justice to keep track of all</p> <p>11 drugs subject to abuse, manufactured or</p> <p>12 distributed in the United States, in order to</p> <p>13 prevent diversion of these drugs from</p> <p>14 legitimate channels of commerce."</p> <p>15 Does McKesson acknowledge the</p> <p>16 truth of that statement?</p> <p>17 MS. HENN: Objection to form.</p> <p>18 THE WITNESS: Yes.</p> <p>19 QUESTIONS BY MR. FARRELL:</p> <p>20 Q. This is just another reflection</p> <p>21 of the US Code that we were reading that</p> <p>22 Congress is giving the authority to the</p> <p>23 Department of Justice to enact safety rules</p> <p>24 in order to prevent the diversion of</p> <p>25 controlled substances, including opium pills,</p> | <p style="text-align: right;">Page 65</p> <p>1 provision that's highlighted aloud.</p> <p>2 A. One second.</p> <p>3 "The illegal importation,</p> <p>4 manufacture, distribution and possession and</p> <p>5 improper use of controlled substances have a</p> <p>6 substantial detrimental effect on the</p> <p>7 public's health and general welfare."</p> <p>8 Q. Does McKesson acknowledge the</p> <p>9 truth of that statement?</p> <p>10 A. Yes.</p> <p>11 Q. So if somebody in the chain of</p> <p>12 distribution breaks the law, it has a</p> <p>13 substantial detrimental effect on the public</p> <p>14 health and general welfare, agreed?</p> <p>15 MS. HENN: Objection to form.</p> <p>16 THE WITNESS: It can.</p> <p>17 QUESTIONS BY MR. FARRELL:</p> <p>18 Q. Now go to page 44.</p> <p>19 Again, this is another</p> <p>20 reiteration that Congress authorizes the</p> <p>21 Attorney General to "promulgate rules and</p> <p>22 regulations and to charge reasonable fees</p> <p>23 relating to the registration and control of</p> <p>24 the manufacture, distribution and dispensing</p> <p>25 of substances covered by the Act."</p> |

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| <p style="text-align: right;">Page 66</p> <p>1 Does McKesson acknowledge the 2 authority of the Department of Justice and 3 the Attorney General to do so? 4 MS. HENN: Objection to form. 5 THE WITNESS: Yes. 6 QUESTIONS BY MR. FARRELL: 7 Q. Now flip to page 45, the very 8 next one. This is a little bit longer, so 9 I'm going to give you a chance to read it 10 real quick. 11 A. Okay. I've read it. 12 Q. So I'm going to read it aloud, 13 and I'm going to stop and ask you some 14 questions. 15 It's -- Section B of 16 Section 303 states that the Attorney General, 17 when issuing registrations, is going to 18 consider several factors, agreed? 19 A. Can you say that again? I was 20 looking at -- 21 Q. Yeah, I was trying to summarize 22 the first four lines. 23 A. Yeah. 24 Q. Basically, what it really boils 25 down to is this is a reiteration of the</p> | <p style="text-align: right;">Page 68</p> <p>1 authority to promulgate rules which govern 2 McKesson so that they maintain effective 3 controls against diversion, and to adopt any 4 other rule they want that may be relevant and 5 consistent with public health and safety? 6 MS. HENN: Objection to form. 7 THE WITNESS: Agree. 8 QUESTIONS BY MR. FARRELL: 9 Q. I just want to make sure that 10 we start off with the premise that the rules 11 we're about to go through aren't designed 12 to -- let me ask it in a better way. 13 The rules that we're about to 14 get into, McKesson acknowledges, are designed 15 with the primary purpose of preventing 16 diversion? 17 MS. HENN: Objection to form. 18 THE WITNESS: Correct. 19 QUESTIONS BY MR. FARRELL: 20 Q. Because diversion impacts 21 public health and safety, and McKesson 22 acknowledges that? 23 A. Yes. 24 MS. HENN: Objection to form. 25 (McKesson-Hartle Exhibit 7</p> |
| <p style="text-align: right;">Page 67</p> <p>1 findings behind the statute that I showed you 2 regarding maintaining effective control. 3 So if you drop down to where it 4 says number 1 at the bottom of the page -- 5 can you start reading there? 6 A. Yeah. Okay. 7 Q. Will you read that aloud, 8 please, starting with "maintenance of 9 effective controls"? 10 A. "Maintenance of effective 11 controls against diversion of particular 12 controlled substances into other than 13 legitimate medical, scientific and industrial 14 channels." 15 Q. All right. So again, what 16 we're talking about is the enactment of rules 17 to prevent diversion? 18 A. Correct. 19 Q. Last factor, factor 5, would 20 you read that? 21 A. "Such other factors as may be 22 relevant to and consistent with the public 23 health and safety." 24 Q. Does McKesson acknowledge that 25 Congress gave the Department of Justice the</p> | <p style="text-align: right;">Page 69</p> <p>1 marked for identification.) 2 QUESTIONS BY MR. FARRELL: 3 Q. The next exhibit we'll have is 4 marked as Exhibit 7, and correspondingly in 5 the top right-hand corner it's MCK 6 30(b)(6)_07-01, and it's just one page. 7 Once we get through this 8 section, we can take a break if you like. 9 All right. So what I'm going 10 to represent to you is that you will not find 11 this anywhere on the Internet either because 12 I made it. In the top left-hand corner is 13 the Department of Justice seal, and in the 14 top right-hand corner is the Drug Enforcement 15 Administration seal, and in the middle is 16 where you can trace down the rules that 17 govern McKesson. 18 Does McKesson acknowledge that 19 Title 21 CFR 1301.74 governs its conduct with 20 the distribution of controlled substances, 21 including opium pills? 22 MS. HENN: Objection to form. 23 THE WITNESS: Yes. 24 QUESTIONS BY MR. FARRELL: 25 Q. Part B is what we're going to</p> |

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1 spend the rest of the day on.
2 Have you read part B before?
3 A. Yes.
4 Q. Does McKesson acknowledge that
5 part B governs its conduct?
6 MS. HENN: Objection to form.
7 THE WITNESS: Yes.
8 QUESTIONS BY MR. FARRELL:
9 Q. Does McKesson acknowledge that
10 for it to be lawfully carrying out its job of
11 dispensing controlled substances and opium
12 pills, it must follow paragraph B?
13 MS. HENN: Objection to form.
14 THE WITNESS: Yes.
15 QUESTIONS BY MR. FARRELL:
16 Q. And if McKesson does not follow
17 paragraph B, its conduct is illegal?
18 MS. HENN: Objection to form.
19 THE WITNESS: Yes.
20 QUESTIONS BY MR. FARRELL:
21 Q. To make it clear --
22 A. Yeah.
23 Q. -- if McKesson follows
24 paragraph B, its conduct is legal?
25 A. Correct.

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1 Q. And if McKesson does not follow
2 paragraph B, its conduct is illegal?
3 MS. HENN: Objection to form.
4 THE WITNESS: Correct.
5 QUESTIONS BY MR. FARRELL:
6 Q. And so bringing full circle, we
7 understand that the purpose of this
8 regulation, one of them, is the prevention of
9 diversion, correct?
10 MS. HENN: Objection to form.
11 THE WITNESS: Correct.
12 QUESTIONS BY MR. FARRELL:
13 Q. So if you engage in illegal
14 conduct and violate paragraph B, the result
15 of that is diversion?
16 MS. HENN: Objection to form.
17 QUESTIONS BY MR. FARRELL:
18 Q. It's the whole reason this law
19 was enacted?
20 MS. HENN: Objection to form.
21 QUESTIONS BY MR. FARRELL:
22 Q. Does McKesson acknowledge that?
23 A. Could you ask the specific
24 question again?
25 MS. HENN: Objection to form.

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1 QUESTIONS BY MR. FARRELL:
2 Q. Yeah, it got very complicated
3 because it was a compound question with
4 compound objections.
5 Does McKesson acknowledge that
6 paragraph B that we're looking at here is
7 intended to prevent diversion?
8 MS. HENN: Objection to form.
9 THE WITNESS: Yes.
10 QUESTIONS BY MR. FARRELL:
11 Q. And that if you follow -- if
12 McKesson abides by paragraph B, its conduct
13 is legal and diversion is prevented?
14 MS. HENN: Objection to form.
15 THE WITNESS: Agreed.
16 QUESTIONS BY MR. FARRELL:
17 Q. And if McKesson does not abide
18 by paragraph B, its conduct is illegal and
19 the result could be diversion?
20 MS. HENN: Objection to form.
21 THE WITNESS: Agree. The
22 result could be diversion.
23 QUESTIONS BY MR. FARRELL:
24 Q. Well, if McKesson is
25 distributing orders of unusual size, could it

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1 be anything other than diversion?
2 MS. HENN: Objection to form.
3 THE WITNESS: It could.
4 QUESTIONS BY MR. FARRELL:
5 Q. All right. Give me some
6 examples.
7 MS. HENN: Objection to form.
8 THE WITNESS: Maybe the best --
9 a customer adds, you know -- their
10 business model changes or they add --
11 for example, a pharmacy may add
12 contracts with multiple long-term care
13 facilities and require that they now
14 dispense more for legitimate reasons,
15 so they could order more in that
16 context.
17 QUESTIONS BY MR. FARRELL:
18 Q. So what's the purpose of the
19 Department of Justice making McKesson follow
20 paragraph B?
21 MS. HENN: Objection to form.
22 THE WITNESS: Say that again?
23 What's the purpose of why we
24 follow that? To try to prevent
25 diversion.

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1 MS. HENN: Mr. Farrell, we've
 2 been going over an hour. Would this
 3 be a good time for a five-minute
 4 break?
 5 MR. FARRELL: Let me close up
 6 this thing and then we'll get there.
 7 MS. HENN: All right.
 8 MR. FARRELL: Is that okay?
 9 MS. HENN: If it's all right
 10 with the witness.
 11 THE WITNESS: It's okay.
 12 QUESTIONS BY MR. FARRELL:
 13 Q. Okay. At the bottom of
 14 Exhibit 7, do you see the numbers in the
 15 brackets?
 16 A. I do.
 17 Q. 36 FR 7778. Do you know what
 18 that means?
 19 A. I don't know off the top of my
 20 head.
 21 Q. What about the letters and
 22 numbers after that; do you know what that
 23 means?
 24 A. The date?
 25 Q. Yes.

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1 A. Of course I know the date.
 2 Q. Yes.
 3 Does McKesson acknowledge that
 4 21 CFR Section 1301.74 has been in force and
 5 effect since 1971?
 6 MS. HENN: Objection to form.
 7 THE WITNESS: Yes.
 8 (McKesson-Hartle Exhibit 8
 9 marked for identification.)
 10 QUESTIONS BY MR. FARRELL:
 11 Q. Just to make sure, I actually
 12 pulled 36 Federal Register 778. I'm going to
 13 have it marked as Exhibit 8.
 14 And I'm not going to ask you to
 15 read the whole thing because I was kind
 16 enough to highlight for you Bates stamp
 17 page 10.
 18 And this is from 1971, and this
 19 is the document in our United States Archives
 20 which adopts the language that we just read
 21 in 21 CFR 1301.74.
 22 Does McKesson acknowledge this
 23 is the law and it has been the law since
 24 1971?
 25 MS. HENN: Objection to form.

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1 THE WITNESS: Yes.
 2 QUESTIONS BY MR. FARRELL:
 3 Q. The language that you just read
 4 in paragraph B, is it the same language
 5 that's in the CFR provision that I showed
 6 you?
 7 A. It's similar. Not word for
 8 word.
 9 Q. Okay. Is there any meaningful
 10 difference?
 11 A. No.
 12 Q. You'll acknowledge that that is
 13 the law today as reflected in the 2016
 14 version that we're not going to have marked
 15 but I'm going to show and ask for -- for --
 16 you can just trust me on it if you'd like,
 17 but you acknowledge that in 20 -- it's the
 18 law today, the same?
 19 MR. SUDDATH: Objection.
 20 QUESTIONS BY MR. FARRELL:
 21 Q. Well, and just to be sure, what
 22 I did was I went and ordered the CFR from
 23 every year between 1971 and this year, and I
 24 looked at every single one of them just to
 25 make sure that the law is, and always has

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1 been, what it says in Masters Pharmaceutical,
 2 including in 1996 when OxyContin was
 3 launched.
 4 So does McKesson acknowledge
 5 that the CFR provision in McKesson {sic} is
 6 and always has been the law governing
 7 McKesson's conduct since 1971?
 8 MS. HENN: Objection to form.
 9 THE WITNESS: Yes.
 10 QUESTIONS BY MR. FARRELL:
 11 Q. I'm sorry. I misspoke.
 12 So does McKesson acknowledge
 13 that the CFR provision we cited in the
 14 Masters Pharmaceutical case is and always has
 15 been the law governing McKesson's conduct
 16 since 1971?
 17 MS. HENN: Objection to form.
 18 THE WITNESS: Can I read what
 19 was in the Masters case again?
 20 (McKesson-Hartle Exhibit 9
 21 marked for identification.)
 22 QUESTIONS BY MR. FARRELL:
 23 Q. Absolutely.
 24 And at this point if you hand
 25 it back to me, this'll be a good point for us

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1 to mark it as Exhibit 9.
2 A. So your question again?
3 Q. Yeah.
4 Does McKesson acknowledge that
5 the CFR provision cited in Masters
6 Pharmaceutical case, which is 21 CFR
7 1301.74 B, is and always has been the law
8 governing McKesson's conduct since 1971?
9 MS. HENN: Objection to form.
10 THE WITNESS: Yes.
11 MR. FARRELL: And
12 unfortunately, I'm not going to be
13 able to get all of my pretty-colored
14 books on the videotape.
15 Let the record reflect that the
16 office of the Federal Register has a
17 kaleidoscope of colors that it uses
18 for the front cover of all of its CFR
19 booklets.
20 And with that, we'll take our
21 first break.
22 VIDEOGRAPHER: The time is
23 10:23 a.m. We're going off the
24 record.
25 (Off the record at 10:23 a.m.)

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1 VIDEOGRAPHER: The time is
2 10:40 a.m., and we're back on the
3 record.
4 QUESTIONS BY MR. FARRELL:
5 Q. I forgot to warn you before the
6 break, but during the break, did you have any
7 meaningful conversations with your counsel
8 about your testimony?
9 MS. HENN: Objection to form.
10 THE WITNESS: No.
11 QUESTIONS BY MR. FARRELL:
12 Q. Did you talk about your
13 testimony at all?
14 MS. HENN: Objection to form.
15 THE WITNESS: Not really my
16 testimony, just --
17 MS. HENN: And I'm just going
18 to instruct the witness not to divulge
19 what we talked about. I don't think
20 that's an appropriate question. I
21 think you got the answer you were
22 looking for.
23 MR. FARRELL: I think I almost
24 got the answer I'm looking for.
25

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1 QUESTIONS BY MR. FARRELL:
2 Q. Did you talk to your lawyer
3 about the substance of your testimony during
4 the break?
5 MS. HENN: And I'll instruct
6 the witness not to divulge particulars
7 of what we talked about.
8 But you may answer that
9 question yes or no.
10 THE WITNESS: Yes.
11 QUESTIONS BY MR. FARRELL:
12 Q. Okay. What did you talk about?
13 MS. HENN: I'm going to
14 instruct the witness not to answer
15 that question as calling for
16 privileged information.
17 MR. FARRELL: Right. But the
18 deposition protocol and the rules
19 governing this litigation state that
20 counsel is not allowed to discuss with
21 the witness the substance of any
22 testimony during a break.
23 And so his answer in the
24 affirmative indicates that that
25 occurred, and so I should be allowed

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1 to inquire about that.
2 MS. HENN: All right. Well,
3 let's take a break, and we will
4 discuss outside and have a privileged
5 conversation, and we'll see if there's
6 any answer that he can provide without
7 divulging privileged information that
8 I don't believe you're entitled to.
9 MR. FARRELL: Okay. So you're
10 going to have a second conversation
11 during a break about the substance of
12 his testimony?
13 MS. HENN: No, Counsel, that's
14 not what's going to happen. But I'd
15 like to take a break so that I can
16 talk to my witness about answering the
17 question inquiring into discussions
18 with counsel.
19 MR. FARRELL: Okay.
20 MS. HENN: Thank you.
21 VIDEOGRAPHER: The time is
22 10:42 a.m. We're going off the
23 record.
24 (Off the record at 10:42 a.m.)
25 VIDEOGRAPHER: The time is

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1 10:46 a.m. We're back on the record.
2 MR. FARRELL: So what did you
3 find out?

4 MS. HENN: Counsel, just to
5 protect the privilege, I'm just going
6 to instruct the witness that when he
7 answered yes to your question and
8 indicated affirmatively that we'd
9 talked about the substance of his
10 testimony, I'm going to ask him to
11 answer your question and tell you what
12 he deemed to be the substance of his
13 testimony, but I'm also going to ask
14 him not to repeat what I -- my
15 response.

16 So let's do that, and we can
17 discuss if you're still concerned.

18 Okay?

19 MR. FARRELL: Not really. Let
20 me make --

21 MS. HENN: Go ahead and ask
22 your question.

23 MR. FARRELL: Let me make it
24 even easier.
25

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1 QUESTIONS BY MR. FARRELL:

2 Q. Did anything your lawyer say to
3 you cause you to change or withdraw anything
4 you said this morning?

5 A. Absolutely not.

6 Q. Did anything your lawyer told
7 you during the break impact or affect your
8 testimony the rest of the day?

9 A. No.

10 Q. That's fair enough.

11 A. Okay.

12 Q. Aside from the statutory duty
13 and the duty that's in the regulation, does
14 McKesson acknowledge that it has a general
15 duty to protect the public against diversion
16 of controlled substances and opium pills?

17 MS. HENN: Objection to form.

18 THE WITNESS: Could you restate
19 that, please?

20 QUESTIONS BY MR. FARRELL:

21 Q. Does McKesson acknowledge that
22 it has a general duty to protect the public
23 against diversion of controlled substances
24 and opium pills into the illicit market?
25

MS. HENN: Objection to form.

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1 THE WITNESS: Yes, a general
2 duty as part of our responsibility,
3 regulatory responsibilities and
4 general responsibilities.

5 QUESTIONS BY MR. FARRELL:

6 Q. So let's be careful. I want
7 to -- the wording sometimes makes a
8 difference.

9 A. Okay.

10 Q. Aside from the statute from the
11 United States Code and the regulations
12 promulgated by the Department of Justice,
13 does McKesson acknowledge that it owes a duty
14 to the general public to prevent diversion of
15 controlled substances and opium pills into
16 the illicit market?

17 MS. HENN: Objection to form.

18 THE WITNESS: We do feel
19 strongly about playing a role in
20 preventing diversion.

21 QUESTIONS BY MR. FARRELL:

22 Q. So the answer needs to be
23 "yes," "no," or "I don't know."

24 A. Yes.

25 MS. HENN: Objection to form.

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1 QUESTIONS BY MR. FARRELL:

2 Q. So your answer is, yes, aside
3 from the statutory and regulatory provisions,
4 McKesson acknowledges that it owes a duty to
5 the general public to prevent diversion of
6 controlled substances and opium pills into
7 the illicit market?

8 MS. HENN: Objection to form.

9 THE WITNESS: Yes.

10 (McKesson-Hartle Exhibit 10
11 marked for identification.)

12 QUESTIONS BY MR. FARRELL:

13 Q. I'm going to mark what is going
14 to be Deposition Exhibit 10. The top
15 right-hand corner is going to be 1910_01_11.
16 And I'll show it to you, to counsel, two
17 extra copies for my new best friends. And
18 I'm going to give you a little introduction
19 to this document before you start flipping
20 through it.

21 The front is the HathiTrust.

22 Are you familiar with the HathiTrust?

23 A. I am not.

24 Q. I wasn't either until this
25 litigation.

| | |
|--|--|
| <p style="text-align: right;">Page 86</p> <p>1 The HathiTrust is an 2 organization, nonprofit organization, that 3 collects public documents and puts them 4 online. 5 A. Okay. 6 Q. This one is from December 1910 7 and January 1911. That's a long time ago, 8 isn't it? 9 A. That would be a long time ago. 10 Q. 100 years ago. 11 This predates 1970s US Code and 12 the 1971 Code of Federal Regulations, agreed? 13 A. Clearly, yes. 14 Q. This is a hearing on -- take a 15 guess. 16 A. Opioids. 17 Q. In particular, opium. And it 18 was about the importation of opium into 19 America back in the early turn of the 20 century. 21 McKesson was around back then, 22 wasn't they? 23 A. McKesson was -- has been 24 around. 25 Q. They were around back during</p> | <p style="text-align: right;">Page 88</p> <p>1 United States Constitution, I'm just going to 2 give you a broad statement. 3 What this is, is this is 4 America's first attempt to regulate opium 5 trafficking in America. And back then there 6 was a big debate on whether or not this was 7 something the federal government can do or 8 it's something that should be left to the 9 states. 10 So what the federal government 11 decided to do was pass the Harrison Narcotic 12 Act. What that did was it basically taxed 13 opium as a way for the federal government to 14 control, and this is a debate about the 15 taxation on the importation of opium. 16 A. Okay. 17 Q. Page 72 is the beginning of the 18 testimony of Mr. McKesson from McKesson & 19 Robbins, which is the predecessor and when 20 McKesson Corporation was in the private hands 21 of the McKesson family. 22 You acknowledge that? 23 A. Correct. 24 Q. I'm going to have you flip to 25 page 75. And if you look near the top, one</p> |
| <p style="text-align: right;">Page 87</p> <p>1 this time frame, agreed? 2 A. Agreed. 3 Q. So why do you think I'm 4 bringing this up? 5 MS. HENN: Objection to form. 6 THE WITNESS: I don't want to 7 speculate why I think you're bringing 8 it up. 9 QUESTIONS BY MR. FARRELL: 10 Q. Guess who testified during this 11 hearing. 12 MS. HENN: Objection to form. 13 THE WITNESS: Don't know. 14 QUESTIONS BY MR. FARRELL: 15 Q. Take a wild guess. 16 MS. HENN: Same objection. 17 THE WITNESS: I don't have 18 honestly a guess. 19 QUESTIONS BY MR. FARRELL: 20 Q. Mr. McKesson. 21 So what I'm going to have you 22 flip to, is I'm going to have you flip to 23 page 72. 24 Now, without going through the 25 entire boring history of commerce clause, the</p> | <p style="text-align: right;">Page 89</p> <p>1 of congressmen asks Mr. McKesson about 2 whether or not he supports this bill. And 3 I'm going to give you an opportunity to read 4 to yourself the provision before I ask you to 5 read it aloud. 6 A. Which specific part do you want 7 me to start and end at? 8 Q. The first time it says 9 "Mr. McKesson." 10 A. Okay. 11 Q. He's asked about whether or not 12 he's in favor of the bill. 13 Do you see that? 14 A. I do. 15 Q. And his answer is, "Yes, very 16 much in favor of the bill." 17 Do you see that provision? 18 A. I do. 19 Q. Now, would you please begin 20 reading the next sentence? 21 A. Out loud? 22 Q. Please. 23 A. "Our firm was founded in 1832, 24 and we have been ever since against the sale 25 of habit-forming drugs and all that kind of</p> |

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1 thing. Orders which have come to us from
 2 suspicious people we have put in the hands of
 3 the proper authorities for tracing and
 4 prosecution, if necessary."
 5 Q. So you agree with me that even
 6 before the enactment of the Controlled
 7 Substances Act and the Code of Federal
 8 Regulations, which we discussed earlier this
 9 morning, is that McKesson, Mr. McKesson
 10 himself, was acknowledging that if they have
 11 suspicious people, they're going to turn it
 12 over to law enforcement for prosecution,
 13 agreed?
 14 MS. HENN: Objection to form.
 15 THE WITNESS: Agreed based on
 16 what I'm reading in this document.
 17 QUESTIONS BY MR. FARRELL:
 18 Q. And this duty predates the US
 19 Code and predates the Code of Federal
 20 Regulations, agreed?
 21 MS. HENN: Objection to form.
 22 THE WITNESS: Agreed.
 23 QUESTIONS BY MR. FARRELL:
 24 Q. So would you agree, would
 25 McKesson agree, that it owes a common law

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1 duty to the American public to prevent
 2 diversion if it's engaged in the distribution
 3 of controlled substances, including opium
 4 pills, to prevent their diversion into the
 5 illicit market?
 6 MS. HENN: Objection to form.
 7 THE WITNESS: Can you ask it in
 8 a shorter version there?
 9 QUESTIONS BY MR. FARRELL:
 10 Q. Probably not.
 11 Does McKesson acknowledge it
 12 owes a common law duty to the American public
 13 to prevent the diversion of controlled
 14 substances, including opium pills, into the
 15 illicit market?
 16 MS. HENN: Objection to form.
 17 THE WITNESS: Yes.
 18 QUESTIONS BY MR. FARRELL:
 19 Q. Now, the first part of the
 20 sentence, it kind of grabbed my attention.
 21 It says, "McKesson has ever since been
 22 against the sale of habit-forming drugs."
 23 And this was in 1910.
 24 Do you see that?
 25 A. I see that.

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1 Q. When did McKesson begin the
 2 business of selling opium pills?
 3 MS. HENN: Objection to form.
 4 THE WITNESS: I do not know.
 5 QUESTIONS BY MR. FARRELL:
 6 Q. At some point in time
 7 McKesson's philosophy changed, and it went
 8 from not selling habit-forming drugs to now
 9 selling habit-forming drugs, agreed?
 10 MS. HENN: Objection to form.
 11 THE WITNESS: Agreed.
 12 QUESTIONS BY MR. FARRELL:
 13 Q. Has McKesson considered, given
 14 the presence of the opioid epidemic in
 15 America, perhaps returning to the stance of
 16 1910 of its founder, Mr. McKesson?
 17 MS. HENN: Objection to form.
 18 THE WITNESS: Again, I'm not
 19 aware of that. Can't answer that
 20 question.
 21 QUESTIONS BY MR. FARRELL:
 22 Q. Well, you could choose not to
 23 sell opium pills anymore in America, could
 24 you not?
 25 A. You could choose to.

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1 Q. But McKesson chooses to
 2 continue to sell opium pills in America,
 3 despite the fact that we have an opiate pill
 4 epidemic?
 5 MS. HENN: Objection to form.
 6 THE WITNESS: We do.
 7 (McKesson-Hartle Exhibit 11
 8 marked for identification.)
 9 QUESTIONS BY MR. FARRELL:
 10 Q. The next exhibit we're going to
 11 have marked as Exhibit 11. In the top
 12 right-hand corner, this is 1996, 04, 01.
 13 We've acknowledged that in
 14 1971, Department of Justice adopted CFR
 15 provision 1301.74, agreed?
 16 A. Agree.
 17 Q. And then we went through and
 18 it's the law today, agreed?
 19 A. Agreed.
 20 Q. It's the law that was
 21 referenced in the Masters Pharmaceutical
 22 case, agreed?
 23 A. Agreed.
 24 Q. And it hadn't changed through
 25 all those colorful books I showed you,

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1 agreed?
 2 MS. HENN: Objection to form.
 3 THE WITNESS: Agreed.
 4 QUESTIONS BY MR. FARRELL:
 5 Q. This is a specific year.
 6 Can you tell me what year it
 7 is?
 8 A. 1996.
 9 Q. Why do you think I picked this
 10 year?
 11 MS. HENN: Objection to form.
 12 THE WITNESS: I'm not -- I'm
 13 not sure.
 14 QUESTIONS BY MR. FARRELL:
 15 Q. What happened in 1996 that
 16 changed the face of opioid sales in America?
 17 MS. HENN: Objection to form.
 18 THE WITNESS: I'm not
 19 100 percent sure. I'd be speculating.
 20 QUESTIONS BY MR. FARRELL:
 21 Q. Well, McKesson's in the
 22 business of selling opium pills, correct?
 23 MS. HENN: Objection to form.
 24 THE WITNESS: As part of
 25 controlled substances, yes.

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1 QUESTIONS BY MR. FARRELL:
 2 Q. And in 1996, business began
 3 hopping, agreed?
 4 MS. HENN: Objection to form.
 5 THE WITNESS: I'm not sure. I
 6 don't -- I don't -- I can't answer
 7 that. I don't know what the business
 8 was before or --
 9 QUESTIONS BY MR. FARRELL:
 10 Q. That's fair enough.
 11 A. Yeah.
 12 Q. In 1996, I'll represent to you,
 13 OxyContin was launched. So all I'm trying to
 14 establish on page 2 of the exhibit is that
 15 under 1301.74 B, the same law was in place
 16 when OxyContin was launched.
 17 MS. HENN: Objection to form.
 18 QUESTIONS BY MR. FARRELL:
 19 Q. Agreed?
 20 A. Understood.
 21 Q. Not understood --
 22 A. Agreed.
 23 Q. Yeah.
 24 A. Sorry.
 25 Q. This might take a little bit

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1 longer because, as you can see, this next
 2 exhibit is a little bit thicker.
 3 (McKesson-Hartle Exhibit 12
 4 marked for identification.)
 5 QUESTIONS BY MR. FARRELL:
 6 Q. We're going to have it marked
 7 as Exhibit 12.
 8 MR. FARRELL: So for the
 9 record, the top right-hand corner is
 10 2000_07. The bottom right-hand
 11 corner, for all the fans listening on
 12 the telephone, is an actual Bates
 13 stamp number. And while this was
 14 previously produced to some Attorney
 15 Generals, it was also produced in the
 16 MDL, so I have an MDL number. And
 17 it's MCKMDL00337660.
 18 QUESTIONS BY MR. FARRELL:
 19 Q. Now, does McKesson recognize
 20 this document?
 21 A. I do.
 22 Q. And has McKesson reviewed this
 23 document in preparation for today's
 24 testimony?
 25 MS. HENN: Objection to form.

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1 THE WITNESS: I have.
 2 QUESTIONS BY MR. FARRELL:
 3 Q. What is this document?
 4 A. This is the operational manual
 5 for how controlled substances are handled
 6 within McKesson.
 7 Q. And what was the date of
 8 enactment?
 9 A. I believe July of 2000.
 10 Q. Okay. Prior to July of 2000,
 11 what was the policy at McKesson regarding the
 12 distribution of controlled substances?
 13 MS. HENN: Objection to form.
 14 Outside the scope.
 15 THE WITNESS: I can't speak to
 16 that.
 17 QUESTIONS BY MR. FARRELL:
 18 Q. To your understanding and
 19 belief sitting here today as the
 20 representative of McKesson, is this document
 21 the earliest version of the controlled
 22 substance monitoring program adopted by the
 23 company?
 24 MS. HENN: Same objections.
 25 THE WITNESS: I can't say for

| | |
|--|---|
| <p style="text-align: right;">Page 98</p> <p>1 certain this is the only one I know 2 of. 3 QUESTIONS BY MR. FARRELL: 4 Q. I'm not asking you to -- 5 A. Yeah. 6 Q. -- foreclose the existence of 7 anything else. 8 A. Right. 9 Q. Sitting here today as the 10 McKesson designee for the 30(b)(6) 11 deposition, what we're showing you here as 12 Exhibit 12 is the earliest version you're 13 aware of for McKesson's controlled substance 14 monitoring program? 15 MS. HENN: Objection to form. 16 Outside the scope. 17 THE WITNESS: Correct, that I'm 18 aware of. 19 QUESTIONS BY MR. FARRELL: 20 Q. So when I asked you in the 21 30(b)(6) deposition notice to testify 22 regarding all past and present suspicious 23 order policies and procedures, this, to the 24 best of your knowledge, is the first time 25 McKesson has adopted a policy and procedure</p> | <p style="text-align: right;">Page 100</p> <p>1 Outside the scope. 2 MR. FARRELL: Counsel, it seems 3 to be directly within point A of the 4 30(b)(6) notice. 5 MS. HENN: We can disagree 6 about that. 7 MR. FARRELL: Well, I'll read 8 it out loud. 9 "Your past, present, suspicious 10 orders monitoring system, SOMS 11 program, policies and procedures." 12 MS. HENN: And I'll just object 13 again to the question as outside the 14 scope. 15 And to respond to you, 16 Mr. Farrell, the -- Special Master 17 Cohen has made rulings about the 18 proper time frame for discovery, and 19 so our position is that asking about 20 the annals of McKesson Corporation is 21 outside the scope. 22 But he can answer your question 23 if you want to state it again. 24 MR. FARRELL: That's a fair 25 point.</p> |
| <p style="text-align: right;">Page 99</p> <p>1 in compliance with the United States Code 2 that we discussed this morning and the Code 3 of Federal Regulations we discussed this 4 morning. 5 MS. HENN: Objection. 6 QUESTIONS BY MR. FARRELL: 7 Q. Agreed? 8 MS. HENN: Objection to form. 9 Outside the scope. 10 THE WITNESS: I can't -- I 11 can't speak to things that may have 12 happened prior to this date that maybe 13 weren't put in this format and written 14 down on paper, but on paper, this is 15 the one that I recognize. 16 QUESTIONS BY MR. FARRELL: 17 Q. I need to be a little more 18 clear about it. 19 Are you aware of any other 20 piece of paper in the annals of McKesson 21 Corporation that talk about the duty to 22 comply with the United States Code and the 23 Code of Federal Regulations regarding the 24 distribution of controlled substances? 25 MS. HENN: Objection to form.</p> | <p style="text-align: right;">Page 101</p> <p>1 QUESTIONS BY MR. FARRELL: 2 Q. So sitting here today as 3 McKesson Corporation, you're unaware of any 4 piece of paper that predates Exhibit 12, but 5 there may be; is that fair? 6 MS. HENN: Objection to form. 7 Outside the scope. 8 THE WITNESS: That's fair. I'm 9 unaware, but I -- there may be. 10 QUESTIONS BY MR. FARRELL: 11 Q. So you don't have any basis in 12 fact, as the McKesson designee today, to 13 discuss what the policies and procedures were 14 for McKesson related to the distribution of 15 controlled substances and opium pills between 16 '96 when OxyContin was launched and the 17 adoption of Section 55, Exhibit 12, in July 18 of 2000; is that a fair statement? 19 MS. HENN: Objection to form. 20 Outside the scope. 21 THE WITNESS: That's a fair 22 statement. 23 QUESTIONS BY MR. FARRELL: 24 Q. So what we're looking at is 25 Exhibit 12.</p> |

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1 Can you tell me the name of
2 this document?
3 A. It's the drug operation manual.
4 It's been -- but it's known as Section 55,
5 often within McKesson, which is also in the
6 title.
7 Q. And as of July 2000, is there
8 any other document related to the
9 distribution of controlled substances in the
10 prevention of diversion other than
11 Section 55?
12 MS. HENN: Objection to form.
13 Outside the scope.
14 THE WITNESS: I'm not following
15 your question 100 percent.
16 QUESTIONS BY MR. FARRELL:
17 Q. Okay. Are you a sports fan?
18 A. I am.
19 Q. What's your favorite sport?
20 A. Wrestling.
21 Q. Very good.
22 How many rules are in the
23 wrestling rule book?
24 A. I couldn't even guess. I don't
25 know.

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1 Q. But the wrestling rule book is
2 intended to be comprehensive, agreed?
3 A. I would agree.
4 Q. If you're a referee, how many
5 different books do you have to read to know
6 the rules of wrestling on the mat?
7 A. Should be one.
8 Q. Is that the same for this
9 document, Exhibit 12? Is this intended to be
10 the rule book for the distribution of
11 controlled substances for McKesson
12 Corporation?
13 MS. HENN: Objection to form.
14 THE WITNESS: For which time
15 frame?
16 QUESTIONS BY MR. FARRELL:
17 Q. July 2000 until -- and I'll
18 give you a hint -- the 2007 Lifestyles
19 program.
20 MS. HENN: Objection to form.
21 Outside the scope.
22 THE WITNESS: I'm not aware of
23 another one.
24 QUESTIONS BY MR. FARRELL:
25 Q. All right. On page 1, the very

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1 first paragraph under general, I'd like you
2 to take a minute and read that. And I've
3 never liked just having you -- or just spring
4 that on you. I want you to kind of digest
5 it.
6 A. Just the first paragraph?
7 Q. Just the first paragraph.
8 A. I read it.
9 Q. All right. Now, I'm going to
10 have you read aloud just the first sentence,
11 and I'm going to compliment you that all of
12 your testimony this morning is spot-on with
13 that very first sentence. I couldn't trip
14 you up at all. So I'd like you to read the
15 first sentence aloud, please.
16 A. "The aim of the Controlled
17 Substance Act is to prevent diversion of
18 abusable substances into illicit traffic
19 while ensuring their availability for
20 legitimate medical purposes."
21 Q. So again, we're back to this
22 theme that the Controlled Substances Act was
23 intended to prevent diversion, agreed?
24 MS. HENN: Objection to form.
25 THE WITNESS: Agreed.

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1 QUESTIONS BY MR. FARRELL:
2 Q. And in July of 2000, McKesson
3 adopted a policy to accomplish that
4 objective; is that fair?
5 MS. HENN: Objection to form.
6 THE WITNESS: They formalized a
7 policy within -- within this document.
8 QUESTIONS BY MR. FARRELL:
9 Q. That's the purpose of this
10 document?
11 A. Right.
12 Q. Who wrote this document?
13 A. I'm not 100 percent sure
14 exactly who wrote it within the McKesson
15 team, but a combination of people.
16 Q. Whose document is this?
17 MS. HENN: Objection to form.
18 THE WITNESS: McKesson's.
19 QUESTIONS BY MR. FARRELL:
20 Q. Is this a document that is kept
21 in the regular course of business for
22 McKesson?
23 MS. HENN: Objection to form.
24 THE WITNESS: It is.
25

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|--|--|
| <p style="text-align: right;">Page 106</p> <p>1 QUESTIONS BY MR. FARRELL: 2 Q. Is this a true and authentic 3 copy of Section 55 of McKesson's policy? 4 MS. HENN: Objection to form. 5 THE WITNESS: I know it's 6 undergoing some revisions. 7 QUESTIONS BY MR. FARRELL: 8 Q. Well, not as of July 2000. 9 A. Oh, can you say it again? 10 Q. Yeah. This document, sitting 11 here today -- 12 A. Right. 13 Q. -- is this a document that as 14 of July of the year 2000 was a document 15 created by McKesson in the course of 16 conducting its regular business activities? 17 MS. HENN: Objection to form. 18 THE WITNESS: Yes. 19 QUESTIONS BY MR. FARRELL: 20 Q. So if I hold this document up 21 in a courtroom I can say this is McKesson's 22 drug operations manual related to the 23 distribution of controlled substances that 24 was adopted in July of 2000? 25 A. Yes.</p> | <p style="text-align: right;">Page 108</p> <p>1 THE WITNESS: To recite, it 2 says "extremely important." 3 QUESTIONS BY MR. FARRELL: 4 Q. And why? 5 A. To prevent the diversion of 6 controlled substances. 7 Q. I'm going to have you now flip 8 to page 27. I'll give you a minute to kind 9 of -- 10 A. The whole -- 11 Q. Yeah, you can just glance it. 12 We're going to walk through it a little bit. 13 We can start with the heading, 14 paragraph A. What's paragraph A, the very 15 top of the page? What's it say? 16 Oh, wait a minute, I'm sorry. 17 A. Am I on the right page here? 18 Q. I was on the wrong page. 19 Page 27, paragraph G. Will you 20 read the first paragraph? 21 A. The heading or the entire -- 22 the first -- 23 Q. You can read the heading if 24 you'd like. 25 A. "DEA continuing education"?</p> |
| <p style="text-align: right;">Page 107</p> <p>1 Q. Now, the second sentence, 2 starting with "The Drug Enforcement 3 Administration," can you read that sentence 4 aloud? 5 A. Sure. 6 "The Drug Enforcement 7 Administration strictly interprets the law 8 and regulations and has imposed significant 9 fines for technical errors in completing 10 forms and keeping records." 11 Q. So the DEA, even as of July 12 2000, took the Controlled Substances Act very 13 seriously, and McKesson acknowledges that, 14 agreed? 15 MS. HENN: Objection to form. 16 THE WITNESS: Correct, or 17 agreed. 18 QUESTIONS BY MR. FARRELL: 19 Q. Now, would you read the last 20 sentence? 21 A. "It's extremely important that 22 McKesson employees comply fully with the 23 regulations and the following guidelines." 24 Q. How important is it? 25 MS. HENN: Objection to form.</p> | <p style="text-align: right;">Page 109</p> <p>1 That piece? 2 Q. Yes. And then there's another 3 word underneath that. 4 A. "Documentation." 5 Q. What does documentation mean? 6 A. Is you document something on 7 paper. 8 Q. Okay. And will you read the 9 sentence, please? 10 A. "All compliance training 11 sessions, formal and informal, held in your 12 distribution center must be logged and 13 documented on the DEA continuing education 14 report." 15 Q. What does that mean? 16 MS. HENN: Objection to form. 17 Outside the scope. 18 THE WITNESS: It means you 19 should document the training that's 20 conducted related to compliance. 21 QUESTIONS BY MR. FARRELL: 22 Q. Okay. Is there a DEA 23 continuing education report that you're aware 24 of? 25 A. Not that I'm aware of.</p> |

| | |
|---|--|
| <p style="text-align: right;">Page 110</p> <p>1 Q. You haven't seen any such 2 thing? 3 A. I don't believe I have, no. 4 Q. But if we ask for it, it's 5 something McKesson could theoretically go and 6 look for? 7 MS. HENN: Objection to form. 8 Outside the scope. 9 THE WITNESS: Theoretically. 10 QUESTIONS BY MR. FARRELL: 11 Q. All right. Because the policy 12 seems to indicate you guys have this 13 documentation of compliance training 14 sessions. And I'll admit to you I haven't 15 seen any, so I was wondering if you'd seen 16 any. 17 A. I have not. 18 Q. Now, if you flip to the next 19 page, page 28, at the top it's paragraph A. 20 And will you read the title of paragraph A? 21 A. "Detecting suspicious orders." 22 Q. And what's it say over there on 23 the right, that number? 24 A. 1301.74. 25 Q. What do you think that is?</p> | <p style="text-align: right;">Page 112</p> <p>1 says. 2 QUESTIONS BY MR. FARRELL: 3 Q. You got to follow the law? 4 MS. HENN: Objection to form. 5 THE WITNESS: Right. 6 QUESTIONS BY MR. FARRELL: 7 Q. And if McKesson doesn't follow 8 the law, that makes its conduct unlawful? 9 MS. HENN: Objection to form. 10 THE WITNESS: Yes. 11 QUESTIONS BY MR. FARRELL: 12 Q. And McKesson has acknowledged 13 that as early as July of 2000? 14 MS. HENN: Objection to form. 15 Outside the scope. 16 THE WITNESS: In this document, 17 yes. 18 QUESTIONS BY MR. FARRELL: 19 Q. The next sentence says, "It is 20 left to the distributor to define what 21 constitutes an unusual or suspicious order." 22 Do you see that sentence? 23 A. I do. 24 Q. And to comply with this, 25 McKesson has adopted this policy; is that</p> |
| <p style="text-align: right;">Page 111</p> <p>1 A. That's from the CFR. 2 Q. All right. And then under 3 paragraph 1, you see where it says, "DEA 4 regulation defines suspicious orders as 5 follows"? 6 A. I do. 7 Q. Will you read what's in the 8 quotation marks? 9 A. "Suspicious orders include 10 orders of unusual size, orders deviating 11 substantially from a normal pattern and 12 orders of unusual frequency." 13 Q. Now, if you go down to the 14 paragraph that starts "recent cases," do you 15 see that? 16 Will you read the first 17 sentence? 18 A. "Recent cases indicate that DEA 19 will seek large penalties from distributors 20 who fail to comply with this regulation." 21 Q. What do you interpret that to 22 mean? 23 MS. HENN: Objection. Outside 24 the scope. 25 THE WITNESS: Exactly what it</p> | <p style="text-align: right;">Page 113</p> <p>1 fair? 2 MS. HENN: Objection to form. 3 Outside the scope. 4 THE WITNESS: Yes. 5 QUESTIONS BY MR. FARRELL: 6 Q. Now, in here it says at the 7 very bottom of the -- it says, "The following 8 reports are produced: The Drohan data 9 reports." 10 Do you see that, the Drohan 11 Data Center reports? 12 A. I do see that. 13 Q. What are the Drohan Data Center 14 reports? 15 MS. HENN: Objection. Outside 16 the scope. 17 THE WITNESS: They're 18 multiple -- that's the -- they're 19 multiple reports that are generated 20 from the system. 21 QUESTIONS BY MR. FARRELL: 22 Q. Okay. Is that system still in 23 place, to your knowledge? 24 A. Not to my knowledge. 25 Q. Who would I ask if I was going</p> |

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1 to ask questions about the reports in the
2 Drohan Data Center?
3 MS. HENN: Objection to form.
4 THE WITNESS: Somebody in our
5 IT department.
6 QUESTIONS BY MR. FARRELL:
7 Q. Okay. Flip to the next page,
8 page 29. Little A talks about controlled
9 substances sales reports.
10 Do you see that?
11 A. I do.
12 Q. That's a document that should
13 exist as of July of 2000, agreed?
14 MS. HENN: Objection to form.
15 Outside the scope.
16 THE WITNESS: Agreed.
17 QUESTIONS BY MR. FARRELL:
18 Q. Little B says, "Controlled
19 substance customer purchase report."
20 That's a document that should
21 exist as of July of 2000, agreed?
22 MS. HENN: Objection to form.
23 Outside the scope.
24 THE WITNESS: Agreed.
25

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1 QUESTIONS BY MR. FARRELL:
2 Q. Little C says, "Daily
3 controlled substance suspicious order warning
4 report."
5 That's a document that should
6 exist as of July 2000, agreed?
7 MS. HENN: Objection to form.
8 Outside the scope.
9 THE WITNESS: Agreed.
10 QUESTIONS BY MR. FARRELL:
11 Q. Next page, little D, "Monthly
12 controlled substance suspicious purchases
13 report."
14 That's a document that should
15 exist as of July 2000, agreed?
16 MS. HENN: Objection to form.
17 Outside the scope.
18 THE WITNESS: Agreed.
19 QUESTIONS BY MR. FARRELL:
20 Q. And little E, "Monthly ARCOS
21 customer recap variance." Again, another
22 document that should exist as of July 2000 as
23 part of the McKesson suspicious order
24 detecting policy.
25 MS. HENN: Objection to form.

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1 Outside the scope.
2 QUESTIONS BY MR. FARRELL:
3 Q. Agreed?
4 A. Can you rephrase that in terms
5 of...
6 Q. Yeah. We're talking about
7 under paragraph A, which is "Detecting
8 Suspicious Orders."
9 A. Agreed.
10 Q. Now, on page 30 there,
11 paragraph B, "Reporting," it says, "The
12 Drohan Data Center will generate the daily
13 controlled substance suspicious order warning
14 reports every two hours, 24 hours a day."
15 Do you see that?
16 A. I see that.
17 Q. Have you seen any of those
18 reports?
19 MS. HENN: Objection. Outside
20 the scope.
21 THE WITNESS: I have.
22 QUESTIONS BY MR. FARRELL:
23 Q. Did you review them in
24 anticipation of today's deposition?
25 A. I did.

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1 Q. And how far back did you review
2 them?
3 A. I'm not certain of the dates on
4 the examples that I had.
5 Q. How old?
6 A. In the early 2000s, I believe.
7 I'd have to look.
8 Q. Did those reports help inform
9 you of the policies and procedures for
10 McKesson in preparation for today's
11 deposition?
12 MS. HENN: Objection to form.
13 THE WITNESS: They did.
14 QUESTIONS BY MR. FARRELL:
15 Q. And did they help refresh your
16 recollection in preparation for today's
17 testimony?
18 MS. HENN: Objection to form.
19 THE WITNESS: They did.
20 QUESTIONS BY MR. FARRELL:
21 Q. Are those documents important
22 to McKesson for purposes of complying with
23 its duties under the Controlled Substances
24 Act beginning in July of 2000?
25 MS. HENN: Objection to form.

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1 Outside the scope.
2 THE WITNESS: Can you say it
3 again one more time?
4 QUESTIONS BY MR. FARRELL:
5 Q. Are those documents important
6 to McKesson for purposes of complying with
7 its duties under the Controlled Substances
8 Act beginning in July of 2000?
9 MS. HENN: Objection to form.
10 Outside the scope.
11 THE WITNESS: They are
12 important.
13 QUESTIONS BY MR. FARRELL:
14 Q. Now, this is the interesting
15 thing. The very next sentence, can you read
16 the next sentence?
17 A. Right after the "24 hours"? Is
18 that where we stopped?
19 Q. Yes, sir.
20 A. Okay. "This report can be
21 faxed to your local DEA office before the
22 order is shipped."
23 Q. So in July 2000, was McKesson
24 still shipping orders that it detected as
25 suspicious?

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1 MS. HENN: Objection to form.
2 Outside the scope.
3 THE WITNESS: From what I
4 understand, there was a review of
5 these reports before they were
6 shipped.
7 QUESTIONS BY MR. FARRELL:
8 Q. So my question is, is if an
9 order gets picked up as a suspicious order
10 under McKesson's detection system in July
11 of 2000, was McKesson reporting it to the DEA
12 but still shipping it?
13 MS. HENN: Objection to form.
14 Outside the scope.
15 THE WITNESS: Let me restate.
16 Reporting to DEA and still shipping
17 it? I believe so.
18 QUESTIONS BY MR. FARRELL:
19 Q. So the answer is yes?
20 A. Yes.
21 Q. The next sentence says, "It
22 does not rely on an individual's judgment or
23 knowledge to determine reporting
24 appropriateness but rather on statistical
25 fact."

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1 Do you see that?
2 A. I see that.
3 Q. So what that means is, is if
4 your system identifies or detects a
5 suspicious order, there's no judgment
6 subjective involved. You report it to the
7 DEA as a matter of statistical fact, agreed?
8 MS. HENN: Objection to form.
9 Outside the scope.
10 QUESTIONS BY MR. FARRELL:
11 Q. Would you like me to restate
12 it?
13 A. Yeah, please.
14 Q. What this means is that in July
15 of 2000, if McKesson's system detected a
16 suspicious order, it is a statistical fact
17 and it is to be reported to the DEA, agreed?
18 MS. HENN: Objection to form.
19 Outside the scope.
20 QUESTIONS BY MR. FARRELL:
21 Q. That's what it says?
22 MS. HENN: Same objections.
23 THE WITNESS: From what I
24 understand, there was -- you know, the
25 way I interpret this is that the

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1 report itself is statistically driven,
2 but then there are -- there are
3 reviews done by McKesson personnel to
4 determine if they are suspicious or
5 not.
6 QUESTIONS BY MR. FARRELL:
7 Q. That's not what this sentence
8 says, though, is it?
9 A. Not specifically.
10 Q. It says the opposite, agreed?
11 MS. HENN: Objection to form.
12 Outside the scope.
13 QUESTIONS BY MR. FARRELL:
14 Q. I'm just talking about what
15 this document says.
16 A. It doesn't say exactly what I
17 said.
18 Q. And I understand the practice
19 may be different than a policy written in
20 July of 2000. I'm just simply asking on
21 Section 55, the operations manual, it says,
22 "There is no individual judgment in
23 determining when to report."
24 Agreed?
25 A. It says "reporting

| | |
|---|---|
| <p style="text-align: right;">Page 122</p> <p>1 appropriateness," not when to.</p> <p>2 Q. Instead, it's a statistical</p> <p>3 fact when you report to the DEA?</p> <p>4 MS. HENN: Objection to form.</p> <p>5 Outside the scope.</p> <p>6 THE WITNESS: That's not how</p> <p>7 I'd characterize the statistical fact,</p> <p>8 when to.</p> <p>9 QUESTIONS BY MR. FARRELL:</p> <p>10 Q. Well, it says, "It does not</p> <p>11 rely on an individual's judgment or knowledge</p> <p>12 to determining {sic} reporting</p> <p>13 appropriateness but rather on statistical</p> <p>14 fact."</p> <p>15 That's what it says, agreed?</p> <p>16 A. Agreed.</p> <p>17 Q. So if, in fact, a daily</p> <p>18 controlled substance suspicious order warning</p> <p>19 report is generated, based on statistical</p> <p>20 facts, it should be reported to the DEA?</p> <p>21 MS. HENN: Objection to form.</p> <p>22 Outside the scope.</p> <p>23 THE WITNESS: Correct.</p> <p>24 QUESTIONS BY MR. FARRELL:</p> <p>25 Q. And it was the policy of</p> | <p style="text-align: right;">Page 124</p> <p>1 order is canceled or cut back, do not fax to</p> <p>2 the DEA."</p> <p>3 Do you see that?</p> <p>4 A. B, I see that.</p> <p>5 Q. I'll give you a chance to catch</p> <p>6 up because I don't want to be unfair about</p> <p>7 it. The last sentence.</p> <p>8 What this says under B, you fax</p> <p>9 a copy immediately to your DEA district</p> <p>10 office, and then if you cancel the suspicious</p> <p>11 order or cut it back, you do not report it to</p> <p>12 the DEA.</p> <p>13 That's what it says, correct?</p> <p>14 MS. HENN: Objection to form.</p> <p>15 THE WITNESS: In the context of</p> <p>16 an ordering error or an -- a</p> <p>17 duplicate, it says that.</p> <p>18 QUESTIONS BY MR. FARRELL:</p> <p>19 Q. Okay. So you think this</p> <p>20 applies just -- if an order is duplicated or</p> <p>21 copied as a clerical error, you don't have to</p> <p>22 report it?</p> <p>23 A. Not 100 percent certain, but</p> <p>24 that's how I would interpret that.</p> <p>25 Q. So if McKesson received an</p> |
| <p style="text-align: right;">Page 123</p> <p>1 McKesson that even if it was reporting a</p> <p>2 suspicious order, it was still shipping?</p> <p>3 MS. HENN: Objection to form.</p> <p>4 Outside the scope.</p> <p>5 QUESTIONS BY MR. FARRELL:</p> <p>6 Q. It's what the policy says?</p> <p>7 MS. HENN: Same objections.</p> <p>8 THE WITNESS: Can you say that</p> <p>9 again or point me to the policy</p> <p>10 section you're referring to?</p> <p>11 QUESTIONS BY MR. FARRELL:</p> <p>12 Q. Yes.</p> <p>13 It says, "This report can be</p> <p>14 faxed to your local DEA district office</p> <p>15 before the order is shipped."</p> <p>16 It does not say, "Halt the</p> <p>17 order." It says, "Report it before</p> <p>18 shipping," agreed?</p> <p>19 MS. HENN: Objection to form.</p> <p>20 Outside the scope.</p> <p>21 THE WITNESS: It says it can</p> <p>22 be, right, agreed.</p> <p>23 QUESTIONS BY MR. FARRELL:</p> <p>24 Q. Now, go to page 31 under</p> <p>25 Section 2, the very last sentence. "If an</p> | <p style="text-align: right;">Page 125</p> <p>1 order from a customer for a million pills and</p> <p>2 then cut it back to ten pills, would McKesson</p> <p>3 still have to report that order?</p> <p>4 MS. HENN: Objection to form.</p> <p>5 Outside the scope.</p> <p>6 THE WITNESS: I think it</p> <p>7 depends on the circumstances. I...</p> <p>8 QUESTIONS BY MR. FARRELL:</p> <p>9 Q. On page 32, the paragraph in</p> <p>10 bold that states, "Discontinue," I'm going to</p> <p>11 read it aloud.</p> <p>12 "Discontinue faxing the daily</p> <p>13 controlled substance suspicious order warning</p> <p>14 report only," and it's underlined "only," "if</p> <p>15 you receive in writing a notice from your</p> <p>16 district DEA office telling you they do not</p> <p>17 want them."</p> <p>18 Do you see that sentence?</p> <p>19 A. I do.</p> <p>20 Q. Are you aware of any such</p> <p>21 writing in the possession of McKesson?</p> <p>22 MS. HENN: Objection to form.</p> <p>23 Outside the scope.</p> <p>24 THE WITNESS: Aware of a formal</p> <p>25 notice from DEA saying that they don't</p> |

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1 want them?

2 QUESTIONS BY MR. FARRELL:

3 Q. Correct.

4 A. Aware of informal discussions

5 and communications but maybe not formal.

6 Q. So Mr. Boggs, Gary Boggs,

7 testified a couple weeks ago in this case as

8 the 30(b)(6) designee for communications with

9 the DEA. He testified he was not aware of

10 any such thing.

11 I'm asking you today, as the

12 McKesson designee for the suspicious order

13 monitoring program, whether or not you're

14 aware under Section 55 if McKesson received

15 in writing any notice from the DEA telling

16 them they don't want the reports.

17 MS. HENN: Objection to form.

18 Outside the scope.

19 THE WITNESS: I'm not aware.

20 QUESTIONS BY MR. FARRELL:

21 Q. Why would you have in your

22 policy the insistence that such a directive

23 be in writing?

24 MS. HENN: Objection to form.

25 Outside the scope.

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1 THE WITNESS: Could you ask the

2 question a different way?

3 Why would we request that it be

4 in writing?

5 QUESTIONS BY MR. FARRELL:

6 Q. Yes.

7 A. To formalize things,

8 documentation.

9 Q. Under paragraph F it says, "The

10 monthly controlled substance suspicious

11 purchase reports and the monthly ARCOS

12 customer recap variance must be sent

13 certified mail, return receipt requested."

14 Do you see that?

15 A. I see that.

16 Q. Why would McKesson, in its

17 Section 55 policy, want confirmation that it

18 was sending reports to the DEA?

19 MS. HENN: Objection to form.

20 Outside the scope.

21 THE WITNESS: To verify that

22 they received them.

23 QUESTIONS BY MR. FARRELL:

24 Q. Have you seen such reports?

25 MS. HENN: Objection to form.

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1 THE WITNESS: The actual

2 suspicious order report or a

3 verification that they received --

4 QUESTIONS BY MR. FARRELL:

5 Q. Verification.

6 A. A verification that DEA -- that

7 we -- I have not seen those reports of

8 verifications.

9 Q. Now, at the very bottom of the

10 page, page 4, do you see what it -- it says

11 "Continued Reporting Responsibility"?

12 A. I do.

13 Q. Will you read that aloud, first

14 sentence?

15 A. The first -- okay.

16 "Forwarding these reports to

17 DEA does not relieve the distribution center

18 of responsibility to review the reports and

19 note order quantities of unusual size."

20 Q. So you acknowledge, sitting

21 here today as McKesson, that simply

22 submitting reports to the DEA does not comply

23 with the US Code or the Code of Federal

24 Regulations?

25 MS. HENN: Objection to form.

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1 Outside the scope.

2 THE WITNESS: Agree.

3 QUESTIONS BY MR. FARRELL:

4 Q. You have a duty to review and

5 note orders of unusual size?

6 A. It's part of our -- this

7 document program, yes.

8 Q. Page 33. It's talking about

9 controlled substances, and it says under

10 paragraph 5, "Controlled substances and

11 List I product order fillers must be aware of

12 our responsibilities. They are expected to

13 report to management any unusual purchase

14 request before orders are filled."

15 Do you see that?

16 A. I do see that.

17 Q. So again, it was the policy of

18 McKesson as of July of 2000 that they were

19 still going to ship suspicious orders as long

20 as they got reported?

21 MS. HENN: Objection to form.

22 Outside the scope.

23 THE WITNESS: Can you rephrase

24 that for me, please?

25

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1 QUESTIONS BY MR. FARRELL:
2 Q. Do you agree that it was
3 McKesson's policy as of July 2000 that they
4 were still going to ship suspicious orders as
5 long as the order got reported to the DEA?
6 MS. HENN: Objection to form.
7 Outside the scope.
8 THE WITNESS: One more time,
9 please.
10 QUESTIONS BY MR. FARRELL:
11 Q. Reading this, it appears the
12 July 2000 policy of McKesson was that they
13 were shipping suspicious orders.
14 Can you confirm that?
15 MS. HENN: Objection to form.
16 Outside the scope.
17 THE WITNESS: I don't know if I
18 can confirm. I've not seen what was
19 shipped, but -- I'm not sure how to
20 answer your question 100 percent.
21 QUESTIONS BY MR. FARRELL:
22 Q. My question is, is under the
23 Section 55 policy adopted by McKesson --
24 A. Right.
25 Q. -- in July of 2000, you were

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1 shipping suspicious orders after reporting
2 them to the DEA?
3 MS. HENN: Objection to form.
4 Outside the scope.
5 THE WITNESS: Yes.
6 QUESTIONS BY MR. FARRELL:
7 Q. Under paragraph 6, "Retail
8 account managers responsibilities," it says,
9 "Our retail account managers can provide
10 another source of useful information."
11 Will you read the next
12 sentence?
13 A. "In fact, reports of controlled
14 substance diversion are not only a necessary
15 part of an overall security program but also
16 serve the public interest at large."
17 Q. Does McKesson agree and
18 acknowledge this fact?
19 MS. HENN: Objection to form.
20 THE WITNESS: Yes.
21 QUESTIONS BY MR. FARRELL:
22 Q. This goes back to what we were
23 talking about earlier, is that aside from
24 your regulatory responsibilities, you also
25 perform a function that serves the public

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1 interest at large?
2 A. Correct.
3 Q. Turn to page 117, please. The
4 bottom paragraph, B, references a
5 "distribution center quarterly DEA
6 checklist."
7 A. Sorry, I was a little bit
8 behind because of water there.
9 Q. It's okay.
10 Bottom of the page, paragraph
11 B, "Distribution center quarterly DEA
12 checklist."
13 Do you see that?
14 A. I see that.
15 Q. Have you seen any such
16 checklists?
17 A. I believe I've seen the example
18 in the -- in this document but not filled-out
19 ones.
20 Q. And what you're referencing is
21 at the end, from pages 123 to 130, is an
22 exemplar of the checklist.
23 A. If exemplar means example, yes.
24 Q. So as of July of 2000, McKesson
25 had a policy and procedure for a quarterly

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1 internal audit or assessment based on what
2 it's called the quarterly DEA checklist for
3 each distribution center, agreed?
4 MS. HENN: Objection to form.
5 Outside the scope.
6 THE WITNESS: Agreed.
7 QUESTIONS BY MR. FARRELL:
8 Q. Sitting here today, though, you
9 have not seen any such document?
10 A. I've not reviewed a completed
11 one. I've seen one.
12 Q. Do they still exist?
13 MS. HENN: Objection to form.
14 Outside the scope.
15 THE WITNESS: I'm not sure.
16 (McKesson-Hartle Exhibit 13
17 marked for identification.)
18 QUESTIONS BY MR. FARRELL:
19 Q. I'm going to have marked as the
20 next sequential exhibit Exhibit 13. The
21 document in the right-hand corner is
22 2001_0828.
23 Again, this is from the
24 HathiTrust.
25 A. I see that.

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1 Q. It's a Congressional record
 2 from 2001.
 3 Can you read the title of the
 4 Congressional investigation?
 5 A. "OxyContin: Its use and abuse:
 6 Hearing before the Subcommittee and Oversight
 7 and Investigations of the Committee on Energy
 8 and Commerce, House of Representatives, 107th
 9 Congress, First Session, August 28th of
 10 2001."
 11 Q. Does McKesson acknowledge that
 12 the use and abuse of OxyContin was on the
 13 national radar at least as early as
 14 August 28, 2001, with a Congressional
 15 hearing?
 16 MS. HENN: Objection to form.
 17 THE WITNESS: Yes.
 18 QUESTIONS BY MR. FARRELL:
 19 Q. I'm going to have you flip to
 20 page 8. This is the introductory statement
 21 from the chairman, James Greenwood, on the
 22 Subcommittee on Oversight and Investigations.
 23 He's from Pennsylvania.
 24 Two-thirds of the way down, the
 25 sentence says, "These actions, though

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1 commendable, also appear long overdue."
 2 Do you see that sentence?
 3 A. I do see that.
 4 Q. Will you begin reading,
 5 starting with "according"?
 6 A. "According to DEA, the number
 7 of oxycodone-related deaths has increased
 8 400 percent since 1996, the same time period
 9 in which the annual number of prescriptions
 10 for OxyContin has risen from approximately
 11 300,000 to almost 6 million."
 12 Q. And how did these
 13 prescriptions -- how did these pills get from
 14 Purdue Pharma, who makes OxyContin, to the
 15 pharmacies?
 16 MS. HENN: Objection to form.
 17 THE WITNESS: After being
 18 prescribed by a doctor --
 19 QUESTIONS BY MR. FARRELL:
 20 Q. Yes.
 21 A. -- and sent to pharmacies --
 22 Q. Yes.
 23 A. -- or other by distributors.
 24 Q. Right.
 25 So between 1996 and the year

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1 2001, the number of prescriptions went from
 2 300,000 to almost 6 million. So the
 3 OxyContin business was a-booming, wasn't it?
 4 MS. HENN: Objection to form.
 5 Outside the scope.
 6 THE WITNESS: It increased
 7 significantly.
 8 QUESTIONS BY MR. FARRELL:
 9 Q. And McKesson was amongst the
 10 distributors that were delivering the pills
 11 from Purdue Pharma to the pharmacies?
 12 MS. HENN: Objection to form.
 13 THE WITNESS: We were.
 14 QUESTIONS BY MR. FARRELL:
 15 Q. Do you believe that the
 16 increase from 300,000 prescriptions to 6
 17 million is an increase of unusual size?
 18 MS. HENN: Objection to form.
 19 Outside the scope.
 20 THE WITNESS: Could you ask
 21 that again?
 22 QUESTIONS BY MR. FARRELL:
 23 Q. You go from 300,000
 24 prescriptions to 6 million in five years. Do
 25 you think that that is an unusual increase?

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1 MS. HENN: Objection to form.
 2 Outside the scope.
 3 THE WITNESS: It appears to be
 4 a significant increase. I don't -- I
 5 don't have the context of before --
 6 everything before, but it's a large
 7 increase.
 8 QUESTIONS BY MR. FARRELL:
 9 Q. Well, assuming in 1996 there
 10 were 300,000 prescriptions and five years
 11 later there were 6 million, would you --
 12 would you characterize that increase as
 13 unusual?
 14 MS. HENN: Objection to form.
 15 Outside the scope.
 16 THE WITNESS: I don't know if I
 17 would characterize it as -- it's
 18 significant.
 19 QUESTIONS BY MR. FARRELL:
 20 Q. Significant enough to get
 21 McKesson's attention?
 22 MS. HENN: Objection to form.
 23 THE WITNESS: Significant
 24 enough.
 25

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1 QUESTIONS BY MR. FARRELL:
 2 Q. Yes?
 3 A. Yes.
 4 Q. Now, two paragraphs down it
 5 says, "In its testimony today" --
 6 Do you see that paragraph?
 7 A. I do.
 8 Q. -- "Purdue Pharma will argue
 9 that the death figures heralded by newspapers
 10 nationwide are inaccurate and are the prime
 11 mover of the negative hype surrounding
 12 OxyContin."
 13 Do you see that sentence?
 14 A. I do see that sentence.
 15 Q. So does McKesson acknowledge
 16 that death figures are being heralded by
 17 newspapers nationwide as of 2001?
 18 MS. HENN: Objection to form.
 19 Outside the scope.
 20 THE WITNESS: Could you ask
 21 that again in a different way, maybe?
 22 QUESTIONS BY MR. FARRELL:
 23 Q. Yeah.
 24 This is saying that there's
 25 newspaper headlines across the country of

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1 people dying taking opium pills that McKesson
 2 is distributing.
 3 Does McKesson acknowledge that?
 4 MS. HENN: Objection to form.
 5 Outside the scope.
 6 THE WITNESS: Not that --
 7 there's certainly headlines of
 8 opioid-related deaths.
 9 QUESTIONS BY MR. FARRELL:
 10 Q. In 2001?
 11 A. I don't know of any
 12 specifically. I'm assuming there were in
 13 that time frame.
 14 Q. And it's a little unfair to ask
 15 you because you weren't there in 2001, but as
 16 McKesson's corporate designee I'm simply
 17 looking for an acknowledgement that the chain
 18 of distribution McKesson was involved in is
 19 being heralded in newspapers as causing
 20 deaths across the country.
 21 MS. HENN: Objection to form.
 22 Outside the scope.
 23 QUESTIONS BY MR. FARRELL:
 24 Q. Does McKesson acknowledge that
 25 fact?

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1 MS. HENN: Same objections.
 2 THE WITNESS: I haven't seen
 3 any of those headlines, so I can't
 4 speak to whether us as a distributor
 5 was called out in those.
 6 QUESTIONS BY MR. FARRELL:
 7 Q. I'm not asking you if you were
 8 called out as a distributor. What I'm asking
 9 you is if McKesson acknowledged that the
 10 pills that it was selling was causing deaths
 11 nationwide and resulted in newspaper
 12 headlines across the country.
 13 MS. HENN: Objection to form.
 14 Outside the scope.
 15 THE WITNESS: Yes, pills that
 16 we distribute were in headlines.
 17 QUESTIONS BY MR. FARRELL:
 18 Q. And Purdue Pharma says that
 19 "those headlines are inaccurate and the prime
 20 mover of the negative hype surrounding
 21 OxyContin."
 22 Does McKesson Corporation,
 23 sitting here today, concur with Purdue
 24 Pharma?
 25 MS. HENN: Objection to form.

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1 Outside the scope.
 2 THE WITNESS: Reading the rest
 3 of this if you don't -- I'm reading
 4 down a little bit more, so...
 5 Can you ask your question
 6 again?
 7 QUESTIONS BY MR. FARRELL:
 8 Q. Yeah.
 9 Does McKesson Corporation,
 10 sitting here today and testifying, concur
 11 with Purdue Pharma that the nationwide
 12 newspapers about overdose deaths are
 13 inaccurate?
 14 MS. HENN: Objection to form.
 15 Outside the scope.
 16 THE WITNESS: I can't speak to
 17 that. I'd just be speculating.
 18 QUESTIONS BY MR. FARRELL:
 19 Q. You don't share Purdue Pharma's
 20 disavow of the problems caused by its
 21 OxyContin pills?
 22 MS. HENN: Objection to form.
 23 Outside the scope.
 24 THE WITNESS: I'm not saying
 25 that. I'm saying I can't answer the

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1 question that you asked earlier.
2 (McKesson-Hartle Exhibit 14
3 marked for identification.)

4 QUESTIONS BY MR. FARRELL:

5 Q. Next exhibit we'll have marked
6 sequentially as Exhibit 4. It's from the
7 Internet. It's document 2002_09_26.

8 MS. HENN: Mr. Farrell, did you
9 mean Exhibit 4 or 14?

10 MR. FARRELL: 14.

11 MS. HENN: Okay.

12 MR. FARRELL: You caught me.

13 QUESTIONS BY MR. FARRELL:

14 Q. And I'm not going to bore you
15 with the details of this, but are you aware
16 of the Office of Inspector General?

17 A. I am.

18 Q. This is a report generated by
19 the OIG in 2002, and what it was talking
20 about was it was talking about the opioid
21 epidemic, and it was talking about the DEA's
22 ability to regulate the industry.

23 Have you reviewed this document
24 before today?

25 A. I have not.

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1 Q. Give me a second here.
2 On Bates stamp page 12, it's
3 talking about diversion investigators. And
4 it says there were 55 at headquarters and 455
5 in the domestic field offices and 13
6 overseas.

7 Do you see that?

8 A. I do see that.

9 Q. So that means there's just over
10 500 DEA diversion investigators in the
11 country in 2001.

12 MS. HENN: Objection to form.
13 Outside the scope.

14 QUESTIONS BY MR. FARRELL:

15 Q. Responsible for regulating the
16 entire industry of the distribution of
17 controlled substances.

18 Do you know how many
19 transactions McKesson engaged in in the
20 distribution of controlled substances in
21 2001?

22 MS. HENN: Objection to form.
23 Outside the scope.

24 THE WITNESS: I do not have the
25 number off the top of my head.

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1 QUESTIONS BY MR. FARRELL:

2 Q. The OIG report basically says
3 that as of 2001 there needed to be
4 reassessment because the DEA was understaffed
5 and underfunded and didn't have sufficient
6 tools to be able to regulate the industry.

7 Does McKesson acknowledge and
8 agree with that assessment?

9 MS. HENN: Objection to form.
10 Outside the scope.

11 THE WITNESS: Could you ask
12 that again?

13 MR. FARRELL: Yeah, obviously
14 I'm leading up to some other
15 documents.

16 QUESTIONS BY MR. FARRELL:

17 Q. But does McKesson acknowledge
18 that in 2001 there were 500 DEA diversion
19 investigators trying to monitor all of the
20 transactions in the country?

21 MS. HENN: Objection to form.
22 Outside the scope.

23 THE WITNESS: I see that in the
24 documents. I can't speak to, you
25 know, the DEA's total -- their

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1 response in total, so I can confirm
2 that's in -- what's in this document.

3 QUESTIONS BY MR. FARRELL:

4 Q. All right. So let's talk about
5 it from a theoretical standpoint.

6 Let's say there were 500
7 highway patrol officers charged with
8 regulating the speed on the highways in the
9 United States of America in the year 2001.

10 Do you believe that that would
11 be a significant challenge, a somewhat of a
12 challenge or not very challengeable at all?

13 MS. HENN: Objection to form.
14 Outside the scope.

15 THE WITNESS: Again, just
16 speculating, it would be a challenge.

17 QUESTIONS BY MR. FARRELL:

18 Q. How many people would speed in
19 America if there were only 500 highway
20 patrolmen in the country?

21 MS. HENN: Same objections.

22 THE WITNESS: I can't even
23 guess or speculate.

24 QUESTIONS BY MR. FARRELL:

25 Q. Do you think that would be a

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1 lot of people or not a lot of people?
2 MS. HENN: Same objections.
3 THE WITNESS: Again, that
4 depends on how many law-abiding
5 citizens you have. I don't know if I
6 can speculate.
7 QUESTIONS BY MR. FARRELL:
8 Q. That is so true.
9 What do you think the American
10 citizen would do if they knew there were only
11 500 highway patrolmen?
12 MS. HENN: Objection to form.
13 Outside the scope.
14 THE WITNESS: Again, I don't
15 know. Some people might speed. Some
16 people might not change their behavior
17 at all.
18 QUESTIONS BY MR. FARRELL:
19 Q. That's right.
20 What if the penalty, if you did
21 get caught, was only \$10?
22 MS. HENN: Objection to scope.
23 QUESTIONS BY MR. FARRELL:
24 Q. How would that impact your view
25 of the regulation of the American highways?

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1 MS. HENN: Objection to form.
2 Outside the scope.
3 THE WITNESS: Again, you can
4 speculate. Some might see that as
5 a -- yeah, it depends. It really
6 depends.
7 QUESTIONS BY MR. FARRELL:
8 Q. What if the biggest weapon the
9 highway patrolmen had, which is the
10 revocation of the driver's license, was
11 changed and so now you don't even lose your
12 license? How would that impact the system?
13 MS. HENN: Same objections.
14 THE WITNESS: Impact the
15 system?
16 QUESTIONS BY MR. FARRELL:
17 Q. Yeah, impact the number of
18 speeders.
19 MS. HENN: Objection to form.
20 Outside the scope.
21 THE WITNESS: You can speculate
22 that it may go down.
23 QUESTIONS BY MR. FARRELL:
24 Q. The number of speeders would go
25 down if you can't lose your license anymore?

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1 MS. HENN: Same objections.
2 THE WITNESS: Oh, if you
3 can't -- sorry, excuse me. It may go
4 up.
5 QUESTIONS BY MR. FARRELL:
6 Q. So if there's -- if there's a
7 limited number of regulators and a fine is
8 not substantial and you don't lose your
9 license, are we going to have more speeders
10 or less speeders?
11 MS. HENN: Objection to form.
12 Outside the scope.
13 THE WITNESS: Can you rephrase
14 that a little bit?
15 QUESTIONS BY MR. FARRELL:
16 Q. Yeah.
17 A. You rolled a few things in
18 there.
19 Q. You know what I'm trying to get
20 to, right? If there's not enough law
21 enforcement and the penalty isn't
22 prohibitive, what happens to conduct?
23 MS. HENN: Objection to form.
24 Outside the scope.
25 THE WITNESS: Again, it's

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1 speculative, but it could -- you know,
2 behavior could change.
3 QUESTIONS BY MR. FARRELL:
4 Q. What if you made billion of
5 dollars by speeding, and there was not enough
6 regulation by law enforcement and the penalty
7 was not very big? What would that do as an
8 incentive?
9 MS. HENN: Same objections.
10 THE WITNESS: Again, it depends
11 on the situation, the scenario.
12 QUESTIONS BY MR. FARRELL:
13 Q. It really depends on whether or
14 not the individual is a law-abiding citizen
15 or a criminal, agreed?
16 MS. HENN: Same objections.
17 Object to form. Outside the scope.
18 THE WITNESS: It's part of it.
19 (McKesson-Hartle Exhibit 15
20 marked for identification.)
21 MR. FARRELL: Last exhibit and
22 then we'll take a break, if that's
23 okay.
24 MS. HENN: That works.
25 QUESTIONS BY MR. FARRELL:

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1 Q. I'm going to have marked
2 Exhibit 15, and the exhibit in the top
3 right-hand corner is 2004_06_17. And for
4 those of you playing at home, this is an
5 excerpt from another Congressional record.
6 This Congressional record was
7 900 pages long, and so I did not copy the
8 whole thing; I just pulled out the part that
9 interested me.
10 This is part of the US Senate
11 Permanent Subcommittee on Investigations, and
12 it was a hearing in June of 2004. And the
13 title of the hearing was "Buyers Beware: The
14 Dangers of Purchasing Pharmaceuticals Over
15 the Internet."
16 Now, McKesson has some
17 experience with this, agreed?
18 MS. HENN: Objection to form.
19 THE WITNESS: Can you define --
20 experience. What type of experience?
21 QUESTIONS BY MR. FARRELL:
22 Q. Well, McKesson was selling to
23 Internet pharmacies in this time frame,
24 agreed?
25 MS. HENN: Objection to form.

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1 THE WITNESS: I believe so.
2 QUESTIONS BY MR. FARRELL:
3 Q. Well, McKesson should know so
4 because you paid a \$13 million fine to the
5 DEA for doing that very thing in 2008.
6 MS. HENN: Objection to form.
7 THE WITNESS: Understood.
8 QUESTIONS BY MR. FARRELL:
9 Q. Okay. So this is a report, and
10 it was -- if you flip to page 2, it was
11 generated by a company called the
12 Pharmaceutical Research Manufacturers of
13 America. I guess they call it PhRMA.
14 Is that how you say it?
15 A. I don't know.
16 Q. Well, McKesson is a member of
17 this organization, and so colloquially within
18 your ranks do you call it PhRMA? PhRMA?
19 PhRMA? What do you say?
20 MS. HENN: Counsel, I'm sorry,
21 just a quick clarification. I'm not
22 seeing a reference -- I see reference
23 to Giuliani and his organization, but
24 I don't see PhRMA.
25 Can you just point out where

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1 you're seeing that?
2 MR. FARRELL: Yeah, it's up on
3 the screen there, and it's in the very
4 middle.
5 MS. HENN: Thank you. I
6 appreciate that.
7 QUESTIONS BY MR. FARRELL:
8 Q. So does McKesson -- first, does
9 McKesson acknowledge that it is an associate
10 member of the Pharmaceutical Research and
11 Manufacturers of America?
12 MS. HENN: Objection to form.
13 Outside the scope.
14 THE WITNESS: I can't speak to
15 that. I don't know.
16 QUESTIONS BY MR. FARRELL:
17 Q. I'll represent to you -- I'll
18 represent to you that you are.
19 A. Okay.
20 Q. And do you know who this Rudy
21 Giuliani fellow is?
22 A. I do know who Mr. Giuliani is.
23 Q. He's a lawyer, too, isn't he?
24 A. He is.
25 Q. And he was hired to do this

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1 investigation by the pharmaceutical industry.
2 Do you see that?
3 MS. HENN: Objection to form.
4 Outside the scope.
5 THE WITNESS: I don't know if I
6 see where specifically it states that.
7 QUESTIONS BY MR. FARRELL:
8 Q. It says, "Giuliani Partners has
9 been" --
10 A. Oh, in the middle. Okay.
11 Sorry.
12 Q. They have been retained by
13 PhRMA to do an evaluation.
14 A. Understood. I see that.
15 Q. Now what I'm going to have you
16 do is I'm going to have you flip over to
17 page 4, and it's interesting what Rudy
18 Giuliani found.
19 Do you see where it says "the
20 distribution chain"?
21 It says, "On its face, it
22 appears that the distribution chain for
23 prescription medicines in the United States
24 is fairly straightforward."
25 A. I was on the wrong number 4.

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1 I see where it says that.
2 Q. And it says, "Manufacturers
3 sell their products to wholesalers."
4 That'd be you, McKesson,
5 correct?
6 A. Correct.
7 Q. "Who, in turn, sell the
8 products to retail pharmacies and stores,
9 who, in turn, dispense medicines to patients
10 with prescriptions."
11 Do you see that?
12 A. Yes.
13 Q. And that's a straightforward
14 system is what Rudy Giuliani is saying.
15 Will you read the next
16 sentence, please?
17 A. "It is not until the system is
18 studied in greater detail that one begins to
19 appreciate both the complexities and the
20 vulnerability of the distribution chain and
21 potential for exploitation or abuse."
22 Q. So big pharma is acknowledging
23 in 2004, through hiring their own expert in
24 presenting to Congress, that this chain of
25 distribution that McKesson is engaged in is

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1 complex and vulnerable for exploitation or
2 abuse, agreed?
3 MS. HENN: Objection to form.
4 Outside the scope.
5 THE WITNESS: It's what they
6 listed in here and documented, yes.
7 QUESTIONS BY MR. FARRELL:
8 Q. And the very first factor for
9 contributing factors, will you read aloud
10 what it says?
11 A. "Wholesalers or distributors
12 are primarily regulated by the states, with
13 no uniform standards across state borders.
14 States have a comparatively small number of
15 investigators to monitor the licensed
16 wholesalers; thus, given the sheer number of
17 wholesalers, oversight is minimal."
18 Q. In the very next paragraph it
19 says, "There are thousands of secondary
20 pharmaceutical wholesalers in addition to
21 McKesson, AmerisourceBergen and Cardinal
22 Health, the big three."
23 Do you see that sentence?
24 A. I see that.
25 Q. So this is a recognition by big

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1 pharma's own consultant that the chain of
2 distribution, at least in 2004 with respect
3 to rogue Internet pharmacies in particular,
4 was subject to exploitation or abuse.
5 MS. HENN: Objection to form.
6 Outside the scope.
7 QUESTIONS BY MR. FARRELL:
8 Q. Agreed that's what it says?
9 MS. HENN: Same objections.
10 THE WITNESS: Agree that's what
11 it says.
12 QUESTIONS BY MR. FARRELL:
13 Q. And in fact, McKesson paid a
14 fine for some of these exploitations and
15 abuse in 2008.
16 MS. HENN: Objection to form.
17 QUESTIONS BY MR. FARRELL:
18 Q. Agreed?
19 A. There was a fine as part of the
20 settlement.
21 Q. Related to this specific topic?
22 MS. HENN: Objection to form.
23 THE WITNESS: It was included
24 in the settlement.
25

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1 QUESTIONS BY MR. FARRELL:
2 Q. So yes?
3 A. Yes.
4 Q. So in 2004, we've got big
5 pharma acknowledging the chain of custody for
6 wholesalers is subject to exploitation or
7 abuse because of a lack of oversight?
8 MS. HENN: Objection to form.
9 Outside the scope.
10 THE WITNESS: Would you say
11 that again? Ask --
12 QUESTIONS BY MR. FARRELL:
13 Q. In 2004, big pharma hired Rudy
14 Giuliani's firm to do an evaluation of the
15 chain of distribution of prescription
16 medicines, and what he found was that the
17 chain of distribution was subject to
18 exploitation or abuse because of lack of
19 oversight?
20 A. That's what's stated in the
21 document, correct.
22 Q. And that during this time
23 frame, McKesson paid a fine for that very
24 thing?
25 MS. HENN: Objection to form.

| | |
|---|---|
| <p style="text-align: right;">Page 158</p> <p>1 THE WITNESS: In the 2008</p> <p>2 settlement, yes.</p> <p>3 QUESTIONS BY MR. FARRELL:</p> <p>4 Q. And that fine was related to</p> <p>5 McKesson selling an unusual size of</p> <p>6 prescription opiate pills to rogue Internet</p> <p>7 pharmacies?</p> <p>8 MS. HENN: Objection to form.</p> <p>9 THE WITNESS: Can you ask that</p> <p>10 again, one more time? Sorry.</p> <p>11 QUESTIONS BY MR. FARRELL:</p> <p>12 Q. Yeah.</p> <p>13 In this time frame, McKesson</p> <p>14 ended up paying a fine to the DEA for selling</p> <p>15 too many opium pills to rogue Internet</p> <p>16 pharmacies in violation of federal law?</p> <p>17 MS. HENN: Objection to form.</p> <p>18 THE WITNESS: To be accurate,</p> <p>19 I'd have to look at the document again</p> <p>20 in terms of specific language, but it</p> <p>21 was part of the settlement.</p> <p>22 QUESTIONS BY MR. FARRELL:</p> <p>23 Q. We'll get to that after lunch.</p> <p>24 A. Okay.</p> <p>25 Q. But you acknowledge that what</p> | <p style="text-align: right;">Page 160</p> <p>1 A. It's a letter from DEA to</p> <p>2 registrants from Joe Rannazzisi.</p> <p>3 Q. Is this -- you might need help</p> <p>4 with counsel a little bit on this.</p> <p>5 I don't see where this letter</p> <p>6 is addressed to McKesson as the recipient;</p> <p>7 however, this document was produced by</p> <p>8 McKesson. And I'm assuming this is the 2006</p> <p>9 Rannazzisi letter that was sent to McKesson.</p> <p>10 Is that your understanding?</p> <p>11 A. Yes.</p> <p>12 Q. So there's no question</p> <p>13 September 27, 2006, McKesson received this</p> <p>14 communication.</p> <p>15 Do you know whether or not</p> <p>16 there was one document sent to McKesson or</p> <p>17 there was a letter sent to each of your</p> <p>18 distribution facilities?</p> <p>19 A. That, I do not know.</p> <p>20 MR. FARRELL: Okay. Can I ask,</p> <p>21 Counsel, do you know?</p> <p>22 MS. HENN: I'm sorry, I don't.</p> <p>23 QUESTIONS BY MR. FARRELL:</p> <p>24 Q. Anyway, if in fact there is</p> <p>25 another document that has a specific one,</p> |
| <p style="text-align: right;">Page 159</p> <p>1 Rudy Giuliani said in 2004 came home to roost</p> <p>2 with McKesson when it paid a fine in 2008?</p> <p>3 MS. HENN: Objection to form.</p> <p>4 Outside the scope.</p> <p>5 THE WITNESS: I don't know if I</p> <p>6 would characterize it as coming home</p> <p>7 to roost, but they're connected or</p> <p>8 they're related.</p> <p>9 MR. FARRELL: Take a break.</p> <p>10 VIDEOGRAPHER: The time is</p> <p>11 12:04 p.m. We're going off the</p> <p>12 record.</p> <p>13 (Off the record at 12:04 p.m.)</p> <p>14 VIDEOGRAPHER: The time is</p> <p>15 1:05 p.m. We're back on the record.</p> <p>16 (McKesson-Hartle Exhibit 16</p> <p>17 marked for identification.)</p> <p>18 QUESTIONS BY MR. FARRELL:</p> <p>19 Q. I'm going to reference</p> <p>20 Exhibit 16 which we've just had marked. The</p> <p>21 top right-hand corner is 2006_09_27,</p> <p>22 Bates-stamped MCKMDL00478906.</p> <p>23 Do you recognize this document?</p> <p>24 A. I do.</p> <p>25 Q. What is it?</p> | <p style="text-align: right;">Page 161</p> <p>1 you'll agree with me that all of these 2006</p> <p>2 letters that were sent out, they were sent</p> <p>3 out to all the registrants across the</p> <p>4 country?</p> <p>5 MS. HENN: Objection to form.</p> <p>6 THE WITNESS: Yeah, that's what</p> <p>7 I believe to be the case, yeah.</p> <p>8 QUESTIONS BY MR. FARRELL:</p> <p>9 Q. In fact, the first sentence</p> <p>10 says --</p> <p>11 A. Right.</p> <p>12 Q. -- this letter is being sent to</p> <p>13 every commercial entity in the United</p> <p>14 States --</p> <p>15 A. Right.</p> <p>16 Q. -- registered --</p> <p>17 A. Whether it went to all of our</p> <p>18 individual DCs, I can't confirm, but --</p> <p>19 Q. But sitting here today as the</p> <p>20 McKesson corporate designee, you acknowledge</p> <p>21 receipt of the September 27, 2006 letter from</p> <p>22 Joe Rannazzisi?</p> <p>23 A. Yes.</p> <p>24 Q. My understanding -- and we'll</p> <p>25 get into it other documents -- is that prior</p> |

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1 to this there was actually meetings with the
2 DEA regarding allegations that you were not
3 complying with your federal regulations; is
4 that fair?

5 MS. HENN: Objection to form.

6 THE WITNESS: I'm aware that
7 there were meetings.

8 QUESTIONS BY MR. FARRELL:

9 Q. I have been unaware of any
10 documents produced related to this time
11 frame, meaning 2004, 2005, 2006, related to
12 the initial investigations or internal
13 documents relating to the DEA's
14 investigation.

15 Have you seen any of those
16 documents?

17 MS. HENN: Objection to form.

18 THE WITNESS: Documents prior
19 to -- leading up to the settlement or
20 the investigation? I don't recall.

21 QUESTIONS BY MR. FARRELL:

22 Q. Okay.

23 A. I don't believe so.

24 Q. I've got some things that we'll
25 go through. What I'm really curious about,

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1 A. From what I understand in
2 talking with a former McKesson employee
3 before this deposition, this was mostly a
4 confirmation or a reiteration of the
5 regulations, which McKesson knew, and
6 highlighting things that were -- you know,
7 that the team was doing. And it was sort of
8 a validation of some of the things that they
9 had been doing, so the red flags and things
10 like that. So not significant changes that
11 I'm aware of.

12 Q. Have you had an opportunity to
13 review the 2006 Rannazzisi letter in
14 preparation for today's deposition?

15 A. Yes.

16 Q. On behalf of McKesson
17 Corporation, are you willing to affirm,
18 acknowledge and validate all of the
19 statements Mr. Rannazzisi places in his
20 September 27, 2006 correspondence?

21 MS. HENN: Objection to form.

22 Outside the scope.

23 THE WITNESS: Could you be more
24 specific? Validate every single
25 statement and...

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1 whether or not there was anything prior to
2 September 27, 2006, that you recall?

3 MS. HENN: Objection to form.

4 THE WITNESS: Not that I
5 recall.

6 QUESTIONS BY MR. FARRELL:

7 Q. So at this point in time, the
8 Section 55 policy was still in force and
9 effect, correct?

10 A. Yes.

11 Q. Are you sure?

12 A. Yes.

13 Q. Okay. This letter was
14 received.

15 Do you know whether or not it
16 was circulated amongst McKesson or it was
17 discussed or reviewed or analyzed?

18 MS. HENN: Objection to form.

19 THE WITNESS: I'm not
20 100 percent sure I know who all
21 received it, so I can't answer that --
22 I can't answer that specifically.

23 QUESTIONS BY MR. FARRELL:

24 Q. Did McKesson change its conduct
25 at all based upon this correspondence?

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1 QUESTIONS BY MR. FARRELL:

2 Q. Yeah.

3 Paragraph C of the 30(b)(6)
4 notice asks for "testimony regarding
5 McKesson's past and present interpretation,
6 compliance, agreement and/or disagreement
7 with this letter from the DEA outlining the
8 duties imposed on a distributor under federal
9 law."

10 So let's start with this: Is
11 there anything in this letter that you
12 disagree with?

13 MS. HENN: Objection to form.

14 THE WITNESS: I don't believe
15 there's anything I would disagree
16 with.

17 QUESTIONS BY MR. FARRELL:

18 Q. Is this an accurate statement
19 of the law?

20 MS. HENN: Objection to form.

21 THE WITNESS: I believe it is.

22 QUESTIONS BY MR. FARRELL:

23 Q. So as of September 27, 2006,
24 the DEA is advising McKesson -- not advising,
25 but referencing the fact that there was a

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1 prescription drug abuse problem in the United
 2 States of America. That's in the very first
 3 paragraph.
 4 Does McKesson acknowledge that?
 5 A. Yes.
 6 Q. The next sentence says, "As
 7 each of you is undoubtedly aware, the abuse,
 8 nonmedical use, of controlled prescription
 9 drugs is a serious and growing health problem
 10 in the country."
 11 Does McKesson agree and
 12 acknowledge that fact as of 2006?
 13 MS. HENN: Objection to form.
 14 THE WITNESS: Yes.
 15 QUESTIONS BY MR. FARRELL:
 16 Q. The next full paragraph says,
 17 "The Controlled Substances Act was designed
 18 by Congress to combat diversion by providing
 19 for a closed system of drug distribution in
 20 which all legitimate handlers of controlled
 21 substances must obtain a DEA registration; as
 22 a condition of maintaining such registration,
 23 must take reasonable steps to ensure that
 24 their registration is not being utilized as a
 25 source of diversion."

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1 Does McKesson acknowledge and
 2 agree with that statement?
 3 MS. HENN: Objection to form.
 4 THE WITNESS: I agree with
 5 that.
 6 QUESTIONS BY MR. FARRELL:
 7 Q. I'd like you to read the next
 8 sentence aloud, please.
 9 A. Where it starts "distributors
 10 are"?
 11 Q. Yes.
 12 A. "Distributors are, of course,
 13 one of the key components of the distribution
 14 chain."
 15 Q. Keep going, please.
 16 A. You want me to read the whole
 17 paragraph? Okay.
 18 "If the closed system is to
 19 function properly as Congress envisioned,
 20 distributors must be vigilant in deciding
 21 whether a prospective customer can be trusted
 22 to deliver controlled substances only for
 23 lawful purposes. The responsibility is
 24 critical, as Congress has expressly declared
 25 that the illegal distribution of controlled

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1 substances has a substantial and detrimental
 2 effect on the health and general welfare of
 3 the American people."
 4 Q. So again, this is the DEA
 5 reiterating what we've discussed before:
 6 that failing to abide by the Code of Federal
 7 Regulations has a substantial and detrimental
 8 effect on the health and general welfare of
 9 the American people.
 10 Does McKesson agree and
 11 acknowledge with that fact?
 12 MS. HENN: Objection to form.
 13 THE WITNESS: Yes.
 14 QUESTIONS BY MR. FARRELL:
 15 Q. Go to the next page, page 2,
 16 the second full paragraph. It says,
 17 "Nonetheless, given the extent of
 18 prescription drug abuse in the United States,
 19 along with the potential -- along with
 20 dangerous and potentially lethal consequences
 21 of such abuse" -- will you please finish that
 22 sentence?
 23 A. "Even just one distributor that
 24 uses its DEA registration to facilitate
 25 diversion can cause enormous harm."

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1 Q. Does McKesson acknowledge and
 2 accept that fact?
 3 MS. HENN: Objection to form.
 4 THE WITNESS: I agree with
 5 that.
 6 QUESTIONS BY MR. FARRELL:
 7 Q. If you go down to the third to
 8 last paragraph, it says, "In addition to
 9 reporting all suspicious orders, a
 10 distributor has a statutory responsibility to
 11 exercise due diligence to avoid filling
 12 suspicious orders that might be diverted into
 13 other than legitimate medical, scientific and
 14 industrial channels."
 15 Does McKesson acknowledge and
 16 accept that to be true?
 17 MS. HENN: Objection to form.
 18 THE WITNESS: Yes.
 19 QUESTIONS BY MR. FARRELL:
 20 Q. And then the last sentence of
 21 the next paragraph says at the end, "The
 22 distributor should exercise due care in
 23 confirming the legitimacy of all orders prior
 24 to filing."
 25 Do you see that sentence?

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1 Not "filing." "Prior to
2 filling."
3 A. I see that sentence.
4 Q. All right. Since I butchered
5 that sentence, will you please read the last
6 sentence that's highlighted on the screen?
7 A. "The distributor should
8 exercise due care in confirming the
9 legitimacy of all orders prior to filling."
10 Q. Now, this is in September
11 of 2006, agreed?
12 A. Agreed.
13 Q. And this is a clear statement
14 from the DEA; would you agree with that?
15 A. I would agree with that.
16 Q. McKesson's official position is
17 that when it received communications from the
18 DEA, the DEA was clear as of 2006?
19 MS. HENN: Objection to form.
20 Also beyond the scope.
21 THE WITNESS: The only question
22 I would have about possibility is due
23 care, what the definition of what due
24 care means.
25

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1 QUESTIONS BY MR. FARRELL:
2 Q. Okay. Fair. Fair enough.
3 If you flip to the next page,
4 there's a laundry list of due care.
5 Do you agree on page 3 going
6 through this, the DEA was clear with McKesson
7 about the circumstances that might be
8 indicative of diversion?
9 MS. HENN: Objection to form.
10 THE WITNESS: I wouldn't
11 classify these -- I wouldn't call them
12 due care. These are to be red flags,
13 indicators.
14 QUESTIONS BY MR. FARRELL:
15 Q. So in 2006, the DEA is telling
16 McKesson, you have to exercise due care prior
17 to filling an order which you deem to be
18 suspicious, agreed?
19 MS. HENN: Objection to form.
20 THE WITNESS: Could you ask
21 that again? Restate that?
22 QUESTIONS BY MR. FARRELL:
23 Q. In 2006, the DEA is telling
24 McKesson, you have to exercise due care prior
25 to filling an order which you deem to be

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1 suspicious, agreed?
2 A. That's what's in the document,
3 yes.
4 Q. Okay. Do you disagree with
5 that?
6 A. That they shared that, they --
7 I don't disagree with that.
8 Q. Yet your Section 55 policy, you
9 testified this morning, you were shipping
10 suspicious orders?
11 MS. HENN: Objection to form.
12 THE WITNESS: There was a
13 process by which those reports were
14 reviewed, which I would consider to be
15 part of due care in a review.
16 QUESTIONS BY MR. FARRELL:
17 Q. Is there a due care file for
18 each of those?
19 MS. HENN: Objection to form.
20 THE WITNESS: Not that I'm
21 aware of.
22 QUESTIONS BY MR. FARRELL:
23 Q. So there's no documentation of
24 the due care of each suspicious order that
25 was shipped by McKesson in accordance with

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1 the July 2000 policies and procedures?
2 MS. HENN: Objection to form.
3 THE WITNESS: Could you restate
4 that, please?
5 QUESTIONS BY MR. FARRELL:
6 Q. Is there any documentation of
7 the due care performed by McKesson from
8 July 2000 onward pursuant to Section 55 with
9 regard to suspicious orders that were
10 shipped?
11 MS. HENN: Objection to form.
12 Outside the scope.
13 THE WITNESS: I can't speak to
14 the specific documentation and how it
15 was documented those reviews that were
16 conducted of those specific reports
17 that were generated. Could have been
18 documentation on a form.
19 QUESTIONS BY MR. FARRELL:
20 Q. Have you seen such
21 documentation?
22 MS. HENN: Objection to form.
23 THE WITNESS: I haven't
24 personally seen examples of that.
25

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| <p>Page 174</p> <p>1 QUESTIONS BY MR. FARRELL:</p> <p>2 Q. Have you seen any piece of</p> <p>3 paper that indicates that the suspicious</p> <p>4 orders that were shipped were subject to a</p> <p>5 due diligence review beforehand, from</p> <p>6 July 2000 to 2007?</p> <p>7 MS. HENN: Objection to form.</p> <p>8 Outside the scope.</p> <p>9 QUESTIONS BY MR. FARRELL:</p> <p>10 Q. It doesn't mean they don't</p> <p>11 exist.</p> <p>12 A. Right.</p> <p>13 Q. I'm just asking if you've seen</p> <p>14 them.</p> <p>15 MS. HENN: Same objections.</p> <p>16 THE WITNESS: I don't believe</p> <p>17 I've seen -- I haven't seen examples.</p> <p>18 QUESTIONS BY MR. FARRELL:</p> <p>19 Q. So you're taking it on faith</p> <p>20 that due diligence was, in fact, performed?</p> <p>21 MS. HENN: Objection to form.</p> <p>22 Outside the scope.</p> <p>23 THE WITNESS: From what I</p> <p>24 understand and some of the</p> <p>25 conversations I've had, that due</p> | <p>Page 176</p> <p>1 THE WITNESS: Agreed.</p> <p>2 QUESTIONS BY MR. FARRELL:</p> <p>3 Q. So every single order that was</p> <p>4 deemed suspicious by your monitoring program</p> <p>5 should have been reported to the DEA from</p> <p>6 July 2000, at least through Rannazzisi's 2006</p> <p>7 letter?</p> <p>8 MS. HENN: Objection to form.</p> <p>9 Outside the scope.</p> <p>10 THE WITNESS: I believe that's</p> <p>11 the case, to have faxed that or sent</p> <p>12 it to the local diversion office.</p> <p>13 QUESTIONS BY MR. FARRELL:</p> <p>14 Q. If McKesson did not report</p> <p>15 those orders, it was in violation of federal</p> <p>16 law, agreed?</p> <p>17 MS. HENN: Objection to form.</p> <p>18 Outside the scope.</p> <p>19 THE WITNESS: Can you ask that</p> <p>20 one again or restate?</p> <p>21 QUESTIONS BY MR. FARRELL:</p> <p>22 Q. Yeah. It's a hypothetical.</p> <p>23 A. Right.</p> <p>24 Q. If McKesson did not report</p> <p>25 suspicious orders detected following the</p> |
| <p>Page 175</p> <p>1 diligence processes did happen and</p> <p>2 exist, yes.</p> <p>3 QUESTIONS BY MR. FARRELL:</p> <p>4 Q. Well, you'll agree with me that</p> <p>5 Section 55 seems to indicate that there's no</p> <p>6 subjective involvement regarding the</p> <p>7 reporting of suspicious orders; it was a</p> <p>8 statistical fact.</p> <p>9 MS. HENN: Objection to form.</p> <p>10 Outside the scope.</p> <p>11 THE WITNESS: Can you ask that</p> <p>12 one again?</p> <p>13 QUESTIONS BY MR. FARRELL:</p> <p>14 Q. Yeah, I'm not trying to play</p> <p>15 word games.</p> <p>16 A. I know.</p> <p>17 Q. It appears from the Section 55</p> <p>18 policy that's in writing that McKesson's</p> <p>19 position was to eliminate subjective review</p> <p>20 of whether or not a suspicious order was</p> <p>21 reportable, and that the policy states if</p> <p>22 it's deemed suspicious as a statistical fact,</p> <p>23 it should be reported to the DEA. Agreed?</p> <p>24 MS. HENN: Objection to form.</p> <p>25 Outside the scope.</p> | <p>Page 177</p> <p>1 July 2000 Section 55 policy -- let me start</p> <p>2 over. Let me see if I can make this as</p> <p>3 simple as possible.</p> <p>4 Beginning in July of the year</p> <p>5 2000 --</p> <p>6 A. Okay.</p> <p>7 Q. -- if McKesson did not report a</p> <p>8 suspicious order it detected pursuant to the</p> <p>9 Section 55 policy, McKesson was in violation</p> <p>10 of federal law; agreed or disagree?</p> <p>11 MS. HENN: Objection to form.</p> <p>12 Outside the scope.</p> <p>13 THE WITNESS: I agree that it</p> <p>14 would -- it's -- I don't know. Maybe</p> <p>15 ask it again. I apologize for pausing</p> <p>16 here.</p> <p>17 QUESTIONS BY MR. FARRELL:</p> <p>18 Q. It's an important question.</p> <p>19 A. Yeah.</p> <p>20 Q. McKesson has a statutory and</p> <p>21 regulatory responsibility under federal</p> <p>22 law --</p> <p>23 A. Right.</p> <p>24 Q. -- to report suspicious orders</p> <p>25 to the DEA?</p> |

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| <p style="text-align: right;">Page 178</p> <p>1 A. Correct.</p> <p>2 Q. McKesson, in July of 2000,</p> <p>3 adopted a policy that we've been referring to</p> <p>4 as Section 55 --</p> <p>5 A. Correct.</p> <p>6 Q. -- to do that very thing?</p> <p>7 A. Correct.</p> <p>8 Q. That policy states that it's</p> <p>9 not a subjective determination of whether to</p> <p>10 report; it's a statistical fact of whether</p> <p>11 you should report?</p> <p>12 MS. HENN: Objection to form.</p> <p>13 THE WITNESS: The report is a</p> <p>14 statistical -- a statistically</p> <p>15 generated one, yes.</p> <p>16 QUESTIONS BY MR. FARRELL:</p> <p>17 Q. And whether to report it to the</p> <p>18 DEA is not a subjective determination; it's</p> <p>19 mandatory if you detect a suspicious order?</p> <p>20 MS. HENN: Objection to form.</p> <p>21 Outside the scope.</p> <p>22 THE WITNESS: I believe that to</p> <p>23 be the case.</p> <p>24 QUESTIONS BY MR. FARRELL:</p> <p>25 Q. So if you didn't do that, it's</p> | <p style="text-align: right;">Page 180</p> <p>1 Sir, have you seen this</p> <p>2 document before today?</p> <p>3 A. I don't believe I've seen this</p> <p>4 specific one.</p> <p>5 Q. I'll give you a minute to</p> <p>6 review.</p> <p>7 A. Okay. I've read that. Thank</p> <p>8 you for taking the time.</p> <p>9 Q. No problem.</p> <p>10 So to start off with on this</p> <p>11 exhibit, you acknowledge that there was a</p> <p>12 meeting with the DEA on April 5, 2007. It's</p> <p>13 from the very first paragraph.</p> <p>14 A. Yes.</p> <p>15 Q. So at this point in time, the</p> <p>16 DEA had issued an order to show cause against</p> <p>17 McKesson, agreed?</p> <p>18 A. Correct.</p> <p>19 Q. I've yet to see any</p> <p>20 documentation of anything that predates</p> <p>21 April 25, 2007, related to this</p> <p>22 investigation.</p> <p>23 Have you seen such documents?</p> <p>24 MS. HENN: Objection to form.</p> <p>25 THE WITNESS: I don't believe</p> |
| <p style="text-align: right;">Page 179</p> <p>1 a violation of federal law?</p> <p>2 MS. HENN: Objection to form.</p> <p>3 Outside the scope.</p> <p>4 THE WITNESS: I believe so.</p> <p>5 QUESTIONS BY MR. FARRELL:</p> <p>6 Q. Big if, right?</p> <p>7 A. If, right.</p> <p>8 Q. If that happened, if McKesson</p> <p>9 detected a suspicious order following the</p> <p>10 Section 55 enactment and did not report it to</p> <p>11 the DEA, that's a violation of federal law?</p> <p>12 A. If.</p> <p>13 MS. HENN: Objection to form.</p> <p>14 (McKesson-Hartle Exhibit 17</p> <p>15 marked for identification.)</p> <p>16 QUESTIONS BY MR. FARRELL:</p> <p>17 Q. I'm going to mark what's going</p> <p>18 to be Exhibit 17. The document ID is</p> <p>19 2007_04_25. I apologize, there is no MDL</p> <p>20 Bates stamp that I could locate; however,</p> <p>21 there is a prior production Bates stamp of</p> <p>22 MCK-HOI-002 dash a whole bunch of zeros and</p> <p>23 then 1.</p> <p>24 I'll give you a few minutes to</p> <p>25 look through this.</p> | <p style="text-align: right;">Page 181</p> <p>1 so, no.</p> <p>2 QUESTIONS BY MR. FARRELL:</p> <p>3 Q. To the extent that such</p> <p>4 documents do exist, we again reserve our</p> <p>5 right to come back and discuss them further,</p> <p>6 subject to the objection of counsel.</p> <p>7 But for what we have here, this</p> <p>8 appears that at least in April of 2007, the</p> <p>9 DEA had already issued a rule to show cause</p> <p>10 complaining that one of your distribution</p> <p>11 centers was not following federal law,</p> <p>12 agreed?</p> <p>13 MS. HENN: Objection to form.</p> <p>14 THE WITNESS: That's what they</p> <p>15 alleged.</p> <p>16 QUESTIONS BY MR. FARRELL:</p> <p>17 Q. When you go to page 2 under</p> <p>18 Proposed Action Plan, does this indicate to</p> <p>19 you that McKesson is acknowledging that they</p> <p>20 need to do better to comply with federal law?</p> <p>21 MS. HENN: Objection to form.</p> <p>22 THE WITNESS: I think this is</p> <p>23 acknowledge -- excuse me --</p> <p>24 acknowledgement of just improvements</p> <p>25 in the program, taking information in</p> |

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| <p style="text-align: right;">Page 182</p> <p>1 to evolve the program based on</p> <p>2 collaboration with DEA and information</p> <p>3 they're receiving.</p> <p>4 QUESTIONS BY MR. FARRELL:</p> <p>5 Q. You're in management, are you</p> <p>6 not?</p> <p>7 A. I am.</p> <p>8 Q. And have you ever written a</p> <p>9 proposed action plan for an employee?</p> <p>10 A. I have.</p> <p>11 Q. And is it just to document</p> <p>12 something new, or are you trying to correct</p> <p>13 something?</p> <p>14 MS. HENN: Objection to form.</p> <p>15 THE WITNESS: There can be many</p> <p>16 different types of action plans. I've</p> <p>17 done both.</p> <p>18 QUESTIONS BY MR. FARRELL:</p> <p>19 Q. Okay. In this one, the very</p> <p>20 first sentence says, "We," meaning McKesson,</p> <p>21 "agree that it is in McKesson's interest to</p> <p>22 implement a program across all of its DCs</p> <p>23 that can assist the company in identifying</p> <p>24 potential excessive purchases and enable the</p> <p>25 company to work more closely with the DEA."</p> | <p style="text-align: right;">Page 184</p> <p>1 MS. HENN: Objection to form.</p> <p>2 THE WITNESS: I don't think</p> <p>3 it's that black and white in terms of</p> <p>4 how you implement a program in</p> <p>5 business, or when you mentioned a</p> <p>6 personnel action plan, it could be a</p> <p>7 combination of both. It could be to</p> <p>8 improve upon what you've been doing</p> <p>9 because of new information or trends</p> <p>10 or data that you've received. It</p> <p>11 could be a number of things.</p> <p>12 QUESTIONS BY MR. FARRELL:</p> <p>13 Q. As a McKesson corporate</p> <p>14 designee, are you willing to admit here today</p> <p>15 that as of April 25, 2007, McKesson was not</p> <p>16 fulfilling its obligations under federal law</p> <p>17 regarding the monitoring of the distribution</p> <p>18 of controlled substances?</p> <p>19 MS. HENN: Objection to form.</p> <p>20 THE WITNESS: Can you ask that</p> <p>21 again, please?</p> <p>22 QUESTIONS BY MR. FARRELL:</p> <p>23 Q. As a McKesson corporate</p> <p>24 designee, are you willing to admit here today</p> <p>25 that as of April 25, 2007, McKesson was not</p> |
| <p style="text-align: right;">Page 183</p> <p>1 Did I read that accurately?</p> <p>2 A. You did.</p> <p>3 Q. So as of April 25th of 2007,</p> <p>4 McKesson did not have a program across all of</p> <p>5 its distribution centers, did it?</p> <p>6 MS. HENN: Object to form.</p> <p>7 THE WITNESS: I believe that's</p> <p>8 accurate. The review of suspicious</p> <p>9 orders, the DU 45s, consider that to</p> <p>10 be programmatic, or a program.</p> <p>11 QUESTIONS BY MR. FARRELL:</p> <p>12 Q. So then why did your lawyers</p> <p>13 for McKesson tell the DEA you were</p> <p>14 implementing a program across all the</p> <p>15 distribution centers?</p> <p>16 MS. HENN: Objection to form.</p> <p>17 QUESTIONS BY MR. FARRELL:</p> <p>18 Q. There's only one of two</p> <p>19 reasons: One is that there was no program,</p> <p>20 or two is that all of the distribution</p> <p>21 centers were not following it.</p> <p>22 MS. HENN: Objection to form.</p> <p>23 QUESTIONS BY MR. FARRELL:</p> <p>24 Q. Can you think of a third</p> <p>25 alternative?</p> | <p style="text-align: right;">Page 185</p> <p>1 fulfilling its obligations under federal law</p> <p>2 regarding the distribution of controlled</p> <p>3 substances?</p> <p>4 MS. HENN: Objection to form.</p> <p>5 THE WITNESS: I believe in</p> <p>6 partnership with DEA and always in</p> <p>7 good faith, McKesson was believed to</p> <p>8 be compliant with the regulations.</p> <p>9 QUESTIONS BY MR. FARRELL:</p> <p>10 Q. I understand that McKesson as a</p> <p>11 corporate entity -- McKesson, it's not a</p> <p>12 person, right? McKesson Corporation is a</p> <p>13 fictional piece of paper that creates a</p> <p>14 business model, agreed?</p> <p>15 MS. HENN: Objection to form.</p> <p>16 QUESTIONS BY MR. FARRELL:</p> <p>17 Q. Is there a Mr. McKesson still</p> <p>18 running the company?</p> <p>19 A. No, there's not.</p> <p>20 Q. All right. So McKesson is a</p> <p>21 corporation?</p> <p>22 A. Agreed. I understand that.</p> <p>23 Q. And in April of 2007, it was</p> <p>24 meeting with the federal government, the DEA,</p> <p>25 and changing the way it was doing business,</p> |

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1 agreed?

2 MS. HENN: Objection to form.

3 THE WITNESS: Changing,

4 enhancing, adding.

5 QUESTIONS BY MR. FARRELL:

6 Q. Okay. And in part, it was

7 because McKesson was not fulfilling its

8 obligations under federal law?

9 MS. HENN: Objection to form.

10 QUESTIONS BY MR. FARRELL:

11 Q. Can that even be disputed?

12 MS. HENN: Same objection.

13 QUESTIONS BY MR. FARRELL:

14 Q. You paid a \$13 million fine as

15 a result of this investigation.

16 Can you not acknowledge today,

17 in 2007 there were shortcomings in your

18 controlled substance monitoring program?

19 MS. HENN: Objection to form.

20 THE WITNESS: We denied those

21 allegations in that settlement, and we

22 obviously -- as any program does,

23 wants to improve and expand and take

24 new information in.

25

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1 QUESTIONS BY MR. FARRELL:

2 Q. So you paid \$13 million as a

3 tax write-off?

4 MS. HENN: Objection to form.

5 THE WITNESS: As a settlement

6 between both parties.

7 QUESTIONS BY MR. FARRELL:

8 Q. To settle what? Allegations of

9 what?

10 MS. HENN: Objection to form.

11 THE WITNESS: Issues related to

12 the regulations.

13 QUESTIONS BY MR. FARRELL:

14 Q. The allegations were that

15 McKesson was not fulfilling its obligations

16 under federal law, agreed?

17 A. That was the allegations.

18 Q. And McKesson wrote an action

19 plan and paid a fine to the DEA to get a

20 release for its conduct?

21 MS. HENN: Objection to form.

22 THE WITNESS: I think that's

23 accurate. We did.

24 QUESTIONS BY MR. FARRELL:

25 Q. And on page 2 of this exhibit,

Page 188

1 it says you're going to implement this

2 Lifestyle Drug Monitoring Program by May 1,

3 2007.

4 Do you see that paragraph?

5 A. I do.

6 Q. So is it fair to say that

7 Section 55, which was in force beginning in

8 July of 2000, was replaced on May 1, 2007, by

9 the Lifestyle Drug Monitoring Program?

10 MS. HENN: Objection to form.

11 THE WITNESS: I don't think

12 it's fair to say it was completely

13 replaced.

14 QUESTIONS BY MR. FARRELL:

15 Q. Modified, amended.

16 So that we're no longer

17 referencing Section 55, we're now going to

18 begin referencing the Lifestyle Drug

19 Monitoring Program.

20 MS. HENN: Objection to form.

21 THE WITNESS: There's

22 components of both that still existed.

23 QUESTIONS BY MR. FARRELL:

24 Q. Formulated and assimilated into

25 the Lifestyle Drug Monitoring Program?

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1 MS. HENN: Objection to form.

2 THE WITNESS: Parts of it.

3 This was an advancement of that.

4 QUESTIONS BY MR. FARRELL:

5 Q. Okay. You'll see in

6 paragraph 2 that it says that you are

7 "developing the technology that will enable

8 each McKesson distribution center to generate

9 an automated report to identify threshold

10 sales."

11 Do you see that?

12 A. I do.

13 Q. Prior to this, you did not have

14 that technology?

15 MS. HENN: Objection to form.

16 THE WITNESS: I can't speak to

17 whether we actually had the technology

18 to create a report like that, but I

19 think this is referencing -- you know,

20 putting that into -- into play with

21 the idea of establishing thresholds

22 and creating reports off of that. So

23 we didn't have that report.

24 QUESTIONS BY MR. FARRELL:

25 Q. You remember this morning we

| | |
|--|---|
| <p style="text-align: right;">Page 190</p> <p>1 went through Section 55 with all those 2 reports that you were generating with the -- 3 what was it called, Drohan Data Center? 4 A. Correct. 5 Q. Right? 6 But in 2007, you're still 7 developing technology to generate summary 8 reports? 9 MS. HENN: Objection to form. 10 QUESTIONS BY MR. FARRELL: 11 Q. Doesn't make sense, does it? 12 A. No, I believe it does. There's 13 additions to this. This is -- those previous 14 reports were at the item level, and they were 15 generated using a certain algorithm. 16 So what's referenced in here is 17 the new concept of accumulating all of those 18 items that have the same DEA base code into a 19 monthly accumulation. So there's IT work, 20 project work, to make those things happen, 21 so... 22 Q. There weren't any monthly 23 reports generated from the Section 55 policy? 24 A. There were monthly reports. 25 MS. HENN: Objection to form.</p> | <p style="text-align: right;">Page 192</p> <p>1 Outside the scope. 2 THE WITNESS: I know the amount 3 was derived from communication with 4 DEA in some of the averages. 5 QUESTIONS BY MR. FARRELL: 6 Q. We'll get to that in a second. 7 But in general, the DEA in 2007 8 is telling McKesson the average pharmacy is 9 5,000 pills a month for each of these four 10 drugs, two of which are oxycodone and 11 hydrocodone, and that McKesson is promising 12 with its proposed action plan following an 13 investigation and a rule to show cause to 14 adopt a threshold of 8,000 pills. 15 MS. HENN: Objection to form. 16 Outside the scope. 17 QUESTIONS BY MR. FARRELL: 18 Q. That's what it says. 19 A. Right. 20 MS. HENN: Same objections. 21 QUESTIONS BY MR. FARRELL: 22 Q. And then following that, on the 23 next page it talks about the level of 24 reviews. Page 3. The top of the page says, 25 "The customer will not be allowed to exceed</p> |
| <p style="text-align: right;">Page 191</p> <p>1 QUESTIONS BY MR. FARRELL: 2 Q. So how does this enhance that? 3 MS. HENN: Objection to form. 4 THE WITNESS: Again, this 5 program added monthly accumulations of 6 thresholds. 7 QUESTIONS BY MR. FARRELL: 8 Q. Great. That's the next 9 paragraph. 10 A. Okay. 11 Q. And you've identified 8,000 12 pills by base code as the threshold for each 13 customer, agreed? 14 MS. HENN: Objection to form. 15 THE WITNESS: For those four 16 specific base codes called out. 17 QUESTIONS BY MR. FARRELL: 18 Q. And that includes hydrocodone 19 and oxycodone? 20 A. It does. 21 Q. And that's because the DEA told 22 McKesson that the average pharmacy in America 23 was selling 5,000 oxycodone pills and 5,000 24 hydrocodone pills per month? 25 MS. HENN: Objection to form.</p> | <p style="text-align: right;">Page 193</p> <p>1 the 8,000 monthly dosage limit until a due 2 diligence review has been completed." 3 A. I see that. 4 Q. So what this is basically doing 5 is McKesson is saying that the base threshold 6 is 8,000 pills, and anything above that is 7 suspicious and will not be reported until a 8 due diligence review has been completed. 9 MS. HENN: Objection to form. 10 QUESTIONS BY MR. FARRELL: 11 Q. Is that a fair and accurate 12 assessment of your Lifestyle Drug Monitoring 13 Program? 14 MS. HENN: Objection to form. 15 THE WITNESS: Can you ask that 16 question again? 17 QUESTIONS BY MR. FARRELL: 18 Q. In 2007, McKesson is telling 19 the DEA, in the midst of a DEA investigation 20 of McKesson, that it's going to adopt a 21 proposed action plan, and it's outlined in 22 this April 25, 2007 letter, agreed? 23 A. Agreed. 24 Q. And as part of that, McKesson 25 has told the DEA we're going to start</p> |

| | |
|--|--|
| <p style="text-align: right;">Page 194</p> <p>1 adopting thresholds. 2 A. Agreed, for those four base 3 codes. 4 Q. This is the first time in 5 McKesson's history that it was using 6 thresholds? 7 MS. HENN: Objection to form. 8 Outside the scope. 9 THE WITNESS: Monthly 10 thresholds, correct. 11 QUESTIONS BY MR. FARRELL: 12 Q. In fact, nobody in the country 13 was doing thresholds prior to this? 14 MS. HENN: Objection to form. 15 Outside the scope. 16 THE WITNESS: I'm not aware if 17 others were. 18 QUESTIONS BY MR. FARRELL: 19 Q. McKesson set an 8,000 threshold 20 limit for each customer for hydrocodone and 21 oxycodone. 22 A. Correct. 23 Q. Anything above that was going 24 to be halted until a due diligence review 25 could be completed.</p> | <p style="text-align: right;">Page 196</p> <p>1 being is in 2006, the DEA is telling McKesson 2 if you get a suspicious order, you have to 3 halt and you cannot ship it until you look 4 into it. 5 MS. HENN: Objection to form. 6 THE WITNESS: Can we look at 7 that specific language? 8 QUESTIONS BY MR. FARRELL: 9 Q. Sure. 10 A. Can you point it out to me? 11 Q. I hope so. 2006_09_27, page 2, 12 beginning with the paragraph, "Thus," 13 two-thirds of the way down, "in addition to 14 reporting all suspicious orders" -- right? 15 What does that say? "In addition to 16 reporting all suspicious orders." 17 "All" means what? 18 A. All. 19 Q. So if you get a suspicious 20 order, what is McKesson supposed to do? 21 A. To report it. 22 Q. And if you don't, is that 23 lawful or unlawful? 24 MS. HENN: Objection to form. 25 THE WITNESS: That doesn't meet</p> |
| <p style="text-align: right;">Page 195</p> <p>1 MS. HENN: Objection to form. 2 THE WITNESS: That's what I 3 understand the process to be. 4 QUESTIONS BY MR. FARRELL: 5 Q. So going back to the 2006 6 Rannazzisi letter, this is an acknowledgement 7 under the shipping requirement that you must 8 halt suspicious orders until due diligence is 9 performed? 10 MS. HENN: Objection to form. 11 THE WITNESS: Can you ask that 12 again or restate that, please? 13 QUESTIONS BY MR. FARRELL: 14 Q. Mr. Rannazzisi, in his 2006 15 letter from the DEA to McKesson, informed 16 McKesson of its duty to halt suspicious 17 orders, agreed? 18 A. Was that the specific language 19 or was that the due -- 20 Q. We can go back and take a look 21 at it. 22 A. Yeah. Exercise due care. 23 Q. I mean, I don't care what 24 standard we're using right now; you can say 25 due diligence or due care. But the idea</p> | <p style="text-align: right;">Page 197</p> <p>1 the expectation or the guideline that 2 they lay out in this communication. 3 QUESTIONS BY MR. FARRELL: 4 Q. Which makes -- and that 5 guideline is premised upon what? 6 MS. HENN: Objection to form. 7 THE WITNESS: The CFR. 8 QUESTIONS BY MR. FARRELL: 9 Q. And so that makes it lawful or 10 unlawful? 11 MS. HENN: Objection to form. 12 THE WITNESS: Unlawful. 13 QUESTIONS BY MR. FARRELL: 14 Q. The next part: "A distributor 15 has a statutory responsibility to exercise 16 due diligence to avoid filling suspicious 17 orders." 18 Agreed? 19 A. I agree with that language. It 20 doesn't say -- that's not halt. 21 Q. Well, it's a halt until you do 22 due diligence -- 23 A. Yeah. 24 Q. -- right? 25 A. It's not a block. Yeah, it's</p> |

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1 a...

2 Q. Maybe this is just a

3 terminology issue.

4 A. Might be.

5 Q. Block -- all I'm saying is, is

6 that McKesson's not allowed to ship a

7 suspicious order without looking into it

8 first, agreed?

9 MS. HENN: Objection to form.

10 THE WITNESS: That's how I read

11 that language.

12 QUESTIONS BY MR. FARRELL:

13 Q. That is the law?

14 A. Yeah.

15 Q. Yes?

16 MS. HENN: Objection to form.

17 THE WITNESS: The law is to

18 design a system to identify suspicious

19 orders.

20 QUESTIONS BY MR. FARRELL:

21 Q. That's one part of the law.

22 A. Right.

23 Q. What does the CFR say?

24 MS. HENN: Objection to form.

25 THE WITNESS: To identify

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1 orders of unusual size, pattern and

2 frequency.

3 QUESTIONS BY MR. FARRELL:

4 Q. And so if you ship a suspicious

5 order without doing due diligence, is that

6 lawful or unlawful?

7 MS. HENN: Objection to form.

8 THE WITNESS: Again, I'm -- the

9 CFR says you must design and operate a

10 system, right, and to identify

11 suspicious orders. I don't believe it

12 says to halt them.

13 QUESTIONS BY MR. FARRELL:

14 Q. It does?

15 A. In that specific language.

16 Q. It does or does not?

17 A. Does not.

18 Q. Is your interpretation of

19 federal law that you're allowed to ship a

20 suspicious order without conducting due

21 diligence?

22 MS. HENN: Objection to form.

23 QUESTIONS BY MR. FARRELL:

24 Q. Maybe this explains why

25 McKesson paid a \$150 million fine.

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1 MS. HENN: Objection to form.

2 QUESTIONS BY MR. FARRELL:

3 Q. Let's get back to it.

4 Masters Pharmaceutical has a

5 reporting requirement and a shipping

6 requirement. We reviewed it this morning,

7 agreed?

8 A. Parts of it, correct. Agreed.

9 Q. It's premised upon a code

10 provision. The United States Congress passed

11 a US Code provision in 1970, agreed?

12 A. Agreed.

13 Q. And it passed -- the Department

14 of Justice enacted regulations which are

15 binding as federal law related to this very

16 topic, agreed?

17 A. Agreed.

18 Q. And if you don't follow those

19 rules, McKesson can be fined by the federal

20 government?

21 A. Agreed.

22 Q. McKesson's been fined twice

23 that I know of, once for 13 million in 2008

24 and once for 150 million in 2017, for

25 violating these very laws.

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1 MS. HENN: Objection to form.

2 THE WITNESS: That's what was

3 alleged.

4 QUESTIONS BY MR. FARRELL:

5 Q. So my question to you is: Is

6 that the shipping requirement that you have

7 to halt a suspicious order under federal law

8 until you do due diligence is and always has

9 been the law in the United States of America?

10 MS. HENN: Objection to form.

11 Outside the scope.

12 THE WITNESS: Can you ask that

13 again, please?

14 QUESTIONS BY MR. FARRELL:

15 Q. The shipping requirement and

16 the reporting requirement as outlined in the

17 Masters Pharmaceutical case is and always has

18 been the law in the United States of America?

19 MS. HENN: Objection to form.

20 Outside the scope.

21 THE WITNESS: I believe that's

22 the law. I mean...

23 QUESTIONS BY MR. FARRELL:

24 Q. Well, you're McKesson --

25 MS. HENN: Did you finish your

| | |
|--|---|
| <p style="text-align: right;">Page 202</p> <p>1 answer?</p> <p>2 THE WITNESS: I did. I didn't</p> <p>3 really have a -- yeah.</p> <p>4 MS. HENN: Okay. Just making</p> <p>5 sure.</p> <p>6 QUESTIONS BY MR. FARRELL:</p> <p>7 Q. So your answer is yes?</p> <p>8 MS. HENN: Objection to form.</p> <p>9 THE WITNESS: Yes.</p> <p>10 QUESTIONS BY MR. FARRELL:</p> <p>11 Q. I don't want to -- I don't want</p> <p>12 you to hesitate.</p> <p>13 A. I'm not a legal expert.</p> <p>14 Q. I'm not asking you to be a</p> <p>15 legal expert.</p> <p>16 A. Right.</p> <p>17 Q. I'm asking McKesson</p> <p>18 Corporation -- I know this -- to be fair, I</p> <p>19 understand you are in a role with McKesson</p> <p>20 being asked to step in the shoes of a</p> <p>21 corporation and answer on its behalf.</p> <p>22 A. Right.</p> <p>23 Q. So I'm not trying to be rude,</p> <p>24 and I know I'm pressing you.</p> <p>25 A. Right.</p> | <p style="text-align: right;">Page 204</p> <p>1 MS. HENN: Objection to form.</p> <p>2 THE WITNESS: And if you don't</p> <p>3 follow the law, I would agree.</p> <p>4 QUESTIONS BY MR. FARRELL:</p> <p>5 Q. And if you don't follow the</p> <p>6 reporting requirement, that's the law?</p> <p>7 MS. HENN: Objection to form.</p> <p>8 THE WITNESS: Again, if you</p> <p>9 don't follow the law, if you don't</p> <p>10 follow the guidelines, it would be</p> <p>11 unlawful.</p> <p>12 QUESTIONS BY MR. FARRELL:</p> <p>13 Q. So when you look at paragraph 7</p> <p>14 of Exhibit 17, the 2007 correspondence from</p> <p>15 McKesson to the DEA, you are announcing that</p> <p>16 you're going to adopt new measures,</p> <p>17 additional measures, revised, amended,</p> <p>18 changed, more measures, to comply with</p> <p>19 federal law?</p> <p>20 MS. HENN: Objection to form.</p> <p>21 QUESTIONS BY MR. FARRELL:</p> <p>22 Q. Agree or disagreed?</p> <p>23 MS. HENN: Objection to form.</p> <p>24 THE WITNESS: We're</p> <p>25 communicating that we were enhancing</p> |
| <p style="text-align: right;">Page 203</p> <p>1 Q. But what I'm trying to do is,</p> <p>2 for the record, create McKesson's position.</p> <p>3 And I've asked for McKesson to designate</p> <p>4 someone to announce its position, and</p> <p>5 fortunately it's you.</p> <p>6 So let me repeat the question.</p> <p>7 The shipping requirement and the reporting</p> <p>8 requirement as outlined and defined in the</p> <p>9 Masters Pharmaceutical case is and always has</p> <p>10 been the law in the United States of America;</p> <p>11 agree or disagree?</p> <p>12 MS. HENN: Object to the form</p> <p>13 of the question. It's outside the</p> <p>14 scope.</p> <p>15 THE WITNESS: I agree that</p> <p>16 that's the law.</p> <p>17 QUESTIONS BY MR. FARRELL:</p> <p>18 Q. And if you don't follow the</p> <p>19 law, that makes it unlawful?</p> <p>20 MS. HENN: Objection to form.</p> <p>21 THE WITNESS: If you don't</p> <p>22 follow a law, that would be unlawful.</p> <p>23 QUESTIONS BY MR. FARRELL:</p> <p>24 Q. And if you don't follow the</p> <p>25 shipping requirement, that's unlawful?</p> | <p style="text-align: right;">Page 205</p> <p>1 the program.</p> <p>2 QUESTIONS BY MR. FARRELL:</p> <p>3 Q. In response to allegations that</p> <p>4 you were not fulfilling your obligations</p> <p>5 under the shipping requirement and reporting</p> <p>6 requirement?</p> <p>7 MS. HENN: Objection to form.</p> <p>8 THE WITNESS: In part due to</p> <p>9 allegations.</p> <p>10 QUESTIONS BY MR. FARRELL:</p> <p>11 Q. Now, this letter is addressed</p> <p>12 to Linden Barber.</p> <p>13 Do you know who Linden Barber</p> <p>14 is?</p> <p>15 A. I've heard of Linden Barber.</p> <p>16 Q. How have you heard of him?</p> <p>17 A. Just in my past experience even</p> <p>18 prior to McKesson, knowing he was in DEA.</p> <p>19 Q. Do you know where he is now?</p> <p>20 A. He's at Cardinal.</p> <p>21 Q. Cardinal Health?</p> <p>22 How come you-all didn't hire</p> <p>23 him?</p> <p>24 A. I can't speak to that. I don't</p> <p>25 know. I'm confident in the people we have on</p> |

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1 the team.
 2 Q. Paragraph 8: "McKesson will
 3 maintain records of customers that have been
 4 authorized to exceed the monthly thresholds
 5 and document the basis for such decisions."
 6 Do you see that?
 7 A. I do.
 8 Q. Have you reviewed those
 9 records?
 10 MS. HENN: Objection to form.
 11 QUESTIONS BY MR. FARRELL:
 12 Q. Where can I find the list of
 13 customers that have been authorized to sell
 14 more than 8,000 pills a month?
 15 MS. HENN: Objection to form.
 16 Outside the scope.
 17 THE WITNESS: I've seen
 18 examples of the checklist or
 19 spreadsheets that notate the review.
 20 QUESTIONS BY MR. FARRELL:
 21 Q. Very good.
 22 The spreadsheets. If a
 23 customer -- well, we'll get there in a few
 24 minutes.
 25 A. Performs.

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1 Q. Yeah. It says here, "This
 2 authority will be reviewed on an ongoing
 3 basis by the distribution center operations
 4 and regulatory staff and periodically
 5 reviewed by corporate regulatory staff."
 6 So the review done by the
 7 distribution center operations and regulatory
 8 staff, have you seen any of those documents?
 9 MS. HENN: Objection to form.
 10 Outside the scope.
 11 QUESTIONS BY MR. FARRELL:
 12 Q. Was this implemented?
 13 MS. HENN: Same objections.
 14 THE WITNESS: Which -- there's
 15 two questions there.
 16 QUESTIONS BY MR. FARRELL:
 17 Q. You can answer in either order.
 18 MS. HENN: Objection to form.
 19 THE WITNESS: This is part of a
 20 review process, a tiered review
 21 process, that's started with
 22 distribution manager's review. And
 23 so -- and escalated. It involved
 24 regulatory affairs at times, so, yes,
 25 it was implemented.

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1 QUESTIONS BY MR. FARRELL:
 2 Q. Because I haven't seen any of
 3 these records.
 4 Have you seen these records?
 5 MS. HENN: Objection to form.
 6 THE WITNESS: The records
 7 documenting whatever review was taken
 8 place?
 9 QUESTIONS BY MR. FARRELL:
 10 Q. Yeah, let me -- let me -- let
 11 me make it simple.
 12 I could theoretically show you
 13 that a Rite Aid, in May of 2007 in Akron,
 14 Ohio, ordered 26,000 oxycodone pills. Under
 15 this lifestyle policy, what it seems to
 16 indicate is that that's more than 8,000 a
 17 month.
 18 You'll agree that 26,000 is
 19 more than 8,000?
 20 A. I will agree to that.
 21 Q. And under this policy, you're
 22 not allowed to ship it until you do what?
 23 MS. HENN: Objection to form.
 24 THE WITNESS: A review or some
 25 due diligence.

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1 QUESTIONS BY MR. FARRELL:
 2 Q. And that due diligence should
 3 be located where?
 4 MS. HENN: Objection to form.
 5 THE WITNESS: Leaning in close
 6 to me.
 7 QUESTIONS BY MR. FARRELL:
 8 Q. I'm anticipating the answer.
 9 A. I'm not 100 percent sure where
 10 all of the files were put, as I wasn't in the
 11 distribution center, but in a customer file.
 12 Q. Perfect.
 13 Have you seen the customer
 14 files for Cuyahoga County and Summit County?
 15 A. I have not.
 16 Q. Me either.
 17 Do they exist?
 18 A. I can't speak to that. I don't
 19 know.
 20 Q. Okay. One of the 30(b)(6)
 21 topics that I asked was to talk about these
 22 due diligence files.
 23 You're telling me you haven't
 24 seen any of the due diligence files for any
 25 pharmacy in Summit County and Cuyahoga

| | |
|--|--|
| <p style="text-align: right;">Page 210</p> <p>1 County?</p> <p>2 MS. HENN: Objection to form.</p> <p>3 Outside the scope.</p> <p>4 QUESTIONS BY MR. FARRELL:</p> <p>5 Q. It's okay if you haven't, and I</p> <p>6 don't want you guessing.</p> <p>7 A. No, I understand.</p> <p>8 I've seen files. I don't know</p> <p>9 about files during this time frame with a</p> <p>10 Level 1, 2 or 3 review. I can't recall.</p> <p>11 Q. Let me ask you this: How --</p> <p>12 how many pharmacies in May of 2007, in</p> <p>13 Cuyahoga and Summit County, do you reckon</p> <p>14 ordered more than 8,000 pills of hydrocodone</p> <p>15 or oxycodone?</p> <p>16 MS. HENN: Objection to form.</p> <p>17 Outside the scope.</p> <p>18 THE WITNESS: I don't know.</p> <p>19 I'd be guessing.</p> <p>20 QUESTIONS BY MR. FARRELL:</p> <p>21 Q. Let's say there's ten. Should</p> <p>22 there be ten customer files that document why</p> <p>23 McKesson was exceeding 8,000 pills a month?</p> <p>24 MS. HENN: Objection to form.</p> <p>25 THE WITNESS: There should be</p> | <p style="text-align: right;">Page 212</p> <p>1 Q. Then it would be lawful or</p> <p>2 unlawful?</p> <p>3 MS. HENN: Objection to form.</p> <p>4 THE WITNESS: It would be</p> <p>5 unlawful.</p> <p>6 QUESTIONS BY MR. FARRELL:</p> <p>7 Q. So it's summarizing altogether.</p> <p>8 If in May of 2007 McKesson is shipping to a</p> <p>9 pharmacy in Cuyahoga or Summit County,</p> <p>10 Cleveland, Ohio, or Akron, Ohio, more than</p> <p>11 8,000 pills of hydrocodone or more than 8,000</p> <p>12 pills of oxycodone, without conducting a due</p> <p>13 diligence review, then McKesson is engaging</p> <p>14 in unlawful conduct according to federal law,</p> <p>15 agreed?</p> <p>16 MS. HENN: Objection to form.</p> <p>17 THE WITNESS: Can you ask it</p> <p>18 again? I apologize. Let's pause</p> <p>19 here. I'm not a lawyer.</p> <p>20 QUESTIONS BY MR. FARRELL:</p> <p>21 Q. I know you're not. And again,</p> <p>22 I'm going to reiterate --</p> <p>23 A. There's discretion in how this</p> <p>24 due diligence is done and documented, so I'm</p> <p>25 trying to understand.</p> |
| <p style="text-align: right;">Page 211</p> <p>1 documentation.</p> <p>2 QUESTIONS BY MR. FARRELL:</p> <p>3 Q. And if there was no due</p> <p>4 diligence performed but those pills were</p> <p>5 still shipped, is that lawful or unlawful?</p> <p>6 MS. HENN: Objection to form.</p> <p>7 QUESTIONS BY MR. FARRELL:</p> <p>8 Q. Do you want me to repeat the</p> <p>9 question?</p> <p>10 A. Sure.</p> <p>11 Q. If, if, if, three ifs, no due</p> <p>12 diligence was performed, yet McKesson still</p> <p>13 shipped more than 8,000 oxycodone pills to a</p> <p>14 pharmacy in Cuyahoga or Summit County in May</p> <p>15 of 2007, is that lawful or unlawful according</p> <p>16 to the federal regulations?</p> <p>17 MS. HENN: Objection to form.</p> <p>18 QUESTIONS BY MR. FARRELL:</p> <p>19 Q. Why are you struggling with</p> <p>20 this?</p> <p>21 A. I'm just thinking. I mean,</p> <p>22 it's -- if it's -- it wouldn't be lawful.</p> <p>23 Q. That makes it...</p> <p>24 A. If there weren't documentation.</p> <p>25 Or due diligence, excuse me.</p> | <p style="text-align: right;">Page 213</p> <p>1 Q. That's right. So -- you're</p> <p>2 right. So let me see if I can say it again.</p> <p>3 If in May of 2007 McKesson</p> <p>4 Corporation is shipping to a pharmacy in</p> <p>5 Cuyahoga or Summit County, Cleveland, Ohio,</p> <p>6 or Akron, Ohio, more than 8,000 pills of</p> <p>7 oxycodone or more than 8,000 pills of</p> <p>8 hydrocodone without conducting due diligence,</p> <p>9 then McKesson Corporation is engaging in</p> <p>10 unlawful conduct according to federal law?</p> <p>11 MS. HENN: Object to form.</p> <p>12 THE WITNESS: I don't know how</p> <p>13 to answer that exactly. It depends.</p> <p>14 QUESTIONS BY MR. FARRELL:</p> <p>15 Q. Depends on what?</p> <p>16 If you ship more than 8,000</p> <p>17 pills without conducting due diligence,</p> <p>18 McKesson is engaging in unlawful conduct</p> <p>19 according to federal law?</p> <p>20 MS. HENN: Objection to form.</p> <p>21 Go ahead.</p> <p>22 THE WITNESS: It can be</p> <p>23 interpreted that way. I mean, it --</p> <p>24 QUESTIONS BY MR. FARRELL:</p> <p>25 Q. Well, the DEA certainly</p> |

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1 interprets it that way, agreed?
2 A. They have.
3 Q. And McKesson has paid fines
4 based on that DEA interpretation, agreed?
5 MS. HENN: Objection to form.
6 THE WITNESS: We've paid fines.
7 Again, we're --
8 QUESTIONS BY MR. FARRELL:
9 Q. Based on the allegations by the
10 DEA that you shipped suspicious orders
11 without conducting due diligence?
12 MS. HENN: Objection to form.
13 Go ahead.
14 THE WITNESS: Based on those
15 allegations.
16 QUESTIONS BY MR. FARRELL:
17 Q. Yes.
18 A. Right.
19 Q. The answer is yes?
20 A. Yes.
21 Q. See, a yes just gets me moving
22 faster. Oh, this one's gonna be fun.
23 MR. FARRELL: Why don't we take
24 a quick break.
25 MS. HENN: Okay.

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1 VIDEOGRAPHER: The time is
2 2:08 p.m., and we're going off the
3 record.
4 (Off the record at 2:08 p.m.)
5 VIDEOGRAPHER: The time is
6 2:20 p.m., and we're back on the
7 record.
8 (McKesson-Hartle Exhibit 18
9 marked for identification.)
10 QUESTIONS BY MR. FARRELL:
11 Q. The next exhibit we're going to
12 have marked is Exhibit 18.
13 For reference, the top
14 right-hand corner is 2007_04_XX. The reason
15 it's XX is the metadata has not yet told me
16 what day of the month it is.
17 Do you know what day of the
18 month this conference was back in 2007?
19 A. I can't think off the top of my
20 head, no. Yeah.
21 Q. The Bates stamp, we have a MDL
22 Bates stamp of MCKMDL00403340.
23 Do you recognize this document?
24 A. I do.
25 Q. What is it?

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1 A. This is a presentation given by
2 Don Walker about -- at a company meeting
3 about the Lifestyle Drug Program.
4 Q. And Don Walker at the time
5 was -- would be working for McKesson?
6 A. Yes.
7 Q. So this is a McKesson document?
8 A. Excuse me, yes.
9 Q. It's produced in the MDL by the
10 McKesson lawyers?
11 A. Yes.
12 Q. From the McKesson files?
13 A. Yes.
14 Q. And is a true and accurate copy
15 of the presentation given at the national
16 operations conference in 2007?
17 MS. HENN: Objection to form.
18 THE WITNESS: Yes, I believe
19 so. I wasn't there, but I believe so,
20 yeah.
21 QUESTIONS BY MR. FARRELL:
22 Q. So this national operations
23 conference 2007, this is a conference that is
24 just for McKesson employees. Is that your
25 understanding?

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1 A. Yeah, they typically are.
2 Q. It's from -- Mr. Boggs
3 testified about it previously. So this was
4 in 2007. Management basically gets together,
5 and Don Walker is the senior vice president
6 of distribution operations, is giving a
7 presentation on a number of topics in the
8 form of a PowerPoint slide?
9 A. Correct.
10 MS. HENN: Objection to form.
11 QUESTIONS BY MR. FARRELL:
12 Q. Yes?
13 A. Correct.
14 Q. So the title of this is
15 "Lifestyle Drugs and Internet Pharmacies."
16 "Lifestyle drugs" is an
17 interesting choice of words.
18 Do you know where it came from?
19 A. It's my understanding that's
20 the language that was -- the DEA used as well
21 and had referenced.
22 Q. Some of the files that I've
23 seen has the DEA asking McKesson where you
24 came up with the oxycodone, hydrocodone and
25 opium pills as lifestyle drugs.

| | |
|--|--|
| <p style="text-align: right;">Page 218</p> <p>1 MS. HENN: Objection to form.</p> <p>2 THE WITNESS: All I can tell</p> <p>3 you is I -- what I've heard is that</p> <p>4 it's the term that came from DEA.</p> <p>5 QUESTIONS BY MR. FARRELL:</p> <p>6 Q. On page 2, it identifies</p> <p>7 several different topics: public health</p> <p>8 issue, DEA focus, McKesson involvement,</p> <p>9 current status, and Lifestyle Drug Monitoring</p> <p>10 Program. So these will be our jeopardy</p> <p>11 questions today.</p> <p>12 Public health issues. Can you</p> <p>13 read what the very -- on page 3, can you read</p> <p>14 what the first item is?</p> <p>15 A. "Abuse of prescription drugs</p> <p>16 has risen 66 percent since 2000."</p> <p>17 Q. So this is McKesson telling</p> <p>18 McKesson employees that we're in the business</p> <p>19 of selling opium pills, and abuse has risen</p> <p>20 66 percent since 2000.</p> <p>21 Does that not give you,</p> <p>22 Mr. McKesson Corporation, pause to think</p> <p>23 about whether or not your role in the chain</p> <p>24 of distribution is contributing to the abuse?</p> <p>25 MS. HENN: Objection to form.</p> | <p style="text-align: right;">Page 220</p> <p>1 trying to make a snarky remark.</p> <p>2 MS. HENN: Thank you.</p> <p>3 QUESTIONS BY MR. FARRELL:</p> <p>4 Q. Not everyone is engaged in the</p> <p>5 chain of distribution of opium pills, though?</p> <p>6 MS. HENN: Objection to form.</p> <p>7 THE WITNESS: Agree.</p> <p>8 QUESTIONS BY MR. FARRELL:</p> <p>9 Q. So I'm asking you, McKesson</p> <p>10 Corporation, whether or not you have any</p> <p>11 regrets about selling so many opium pills.</p> <p>12 MS. HENN: Objection to form.</p> <p>13 Outside the scope.</p> <p>14 THE WITNESS: Back to your</p> <p>15 question about this, I would -- sure</p> <p>16 that gives you pause, I mean, to</p> <p>17 understand that there's an epidemic</p> <p>18 out there. And clearly there's many</p> <p>19 players involved in the flow of</p> <p>20 distribution.</p> <p>21 QUESTIONS BY MR. FARRELL:</p> <p>22 Q. As of 2007, McKesson is</p> <p>23 recognizing that opioid painkillers kill more</p> <p>24 than cocaine and heroin combined, agreed?</p> <p>25 MS. HENN: Objection to form.</p> |
| <p style="text-align: right;">Page 219</p> <p>1 THE WITNESS: Can you ask that</p> <p>2 again, please?</p> <p>3 QUESTIONS BY MR. FARRELL:</p> <p>4 Q. This is McKesson telling</p> <p>5 McKesson employees that abuse of prescription</p> <p>6 drugs has risen 66 percent since the year</p> <p>7 2000.</p> <p>8 Does that not give you,</p> <p>9 Mr. McKesson Corporation, pause to think</p> <p>10 about whether or not your role in the chain</p> <p>11 of distribution is contributing to such</p> <p>12 abuse?</p> <p>13 MS. HENN: Objection to form.</p> <p>14 THE WITNESS: I think it's --</p> <p>15 it should give everybody pause that</p> <p>16 that was the trend that was going on,</p> <p>17 and it's a piece of information shared</p> <p>18 with leaders to inform them. So --</p> <p>19 QUESTIONS BY MR. FARRELL:</p> <p>20 Q. But not everybody is selling</p> <p>21 opium pills; McKesson is.</p> <p>22 MS. HENN: Counsel, can we just</p> <p>23 make sure we let the witness finish</p> <p>24 his answers?</p> <p>25 MR. FARRELL: Sure. I was</p> | <p style="text-align: right;">Page 221</p> <p>1 THE WITNESS: Agree.</p> <p>2 QUESTIONS BY MR. FARRELL:</p> <p>3 Q. And these are McKesson's words.</p> <p>4 Where is McKesson getting this</p> <p>5 data from?</p> <p>6 MS. HENN: Objection to form.</p> <p>7 Outside the scope.</p> <p>8 THE WITNESS: I don't know</p> <p>9 specifically where they -- their</p> <p>10 source of data for that particular</p> <p>11 line, but information from different</p> <p>12 sources. Could be DEA, could be CDC,</p> <p>13 it could be wherever.</p> <p>14 QUESTIONS BY MR. FARRELL:</p> <p>15 Q. It says here, "Rogue Internet</p> <p>16 pharmacies distributing oxycodone,</p> <p>17 hydrocodone, phentermine and alprazolam," yet</p> <p>18 McKesson was selling to rogue Internet</p> <p>19 pharmacies, true?</p> <p>20 MS. HENN: Objection to form.</p> <p>21 Outside the scope.</p> <p>22 THE WITNESS: Can you ask that</p> <p>23 again, please?</p> <p>24 QUESTIONS BY MR. FARRELL:</p> <p>25 Q. McKesson is noting that rogue</p> |

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1 Internet pharmacies are selling oxycodone and
2 hydrocodone, yet what's missing from this
3 slide is the fact that McKesson was supplying
4 the pills to the rogue Internet pharmacies.

5 MS. HENN: Objection to form.

6 THE WITNESS: And what's your
7 specific question again?

8 QUESTIONS BY MR. FARRELL:

9 Q. What gives?

10 MS. HENN: Objection to form.

11 THE WITNESS: I don't know what
12 type of response a "what gives"
13 question is.

14 QUESTIONS BY MR. FARRELL:

15 Q. Yeah. You're noting that
16 people are dying, and part of the reason is
17 that rogue Internet pharmacies are out there.
18 Yet McKesson, during this time frame, is
19 selling to some of those very same Internet
20 pharmacies, and that's what the DEA fined you
21 for.

22 So is this ignorance of who
23 you're selling to? Is this repackaging,
24 reframing the issue? Or is it just flat out
25 a misrepresentation?

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1 MS. HENN: Objection to form.
2 Outside the scope.

3 THE WITNESS: This is raising
4 awareness in -- about the issues that
5 are the public health issues,
6 communicating with leaders and sharing
7 the -- where McKesson is enhancing the
8 program.

9 QUESTIONS BY MR. FARRELL:

10 Q. But you understand that the
11 rogue Internet pharmacies were getting their
12 pills from, among other people, McKesson,
13 agreed?

14 A. I understand.

15 MS. HENN: Objection to form.

16 QUESTIONS BY MR. FARRELL:

17 Q. Agreed?

18 A. I understand. Agreed.

19 Q. I'm asking if you understand.

20 I want you to confirm that the rogue Internet
21 pharmacies were in fact getting some of their
22 pills from McKesson.

23 MS. HENN: Objection to form.

24 THE WITNESS: I don't have
25 specific details on that, but --

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1 QUESTIONS BY MR. FARRELL:

2 Q. You understand that to be true?

3 A. -- I understand that to be
4 true.

5 Q. So McKesson Corporation admits
6 it was selling oxycodone and hydrocodone to
7 rogue Internet pharmacies in and around 2007?

8 MS. HENN: Objection to form.
9 Outside the scope.

10 THE WITNESS: Again, I don't
11 know the specific examples and --

12 QUESTIONS BY MR. FARRELL:

13 Q. I'm not asking for specific
14 examples.

15 A. Right.

16 Q. I'm asking you to confirm that
17 in 2007, McKesson Corporation was selling
18 oxycodone and hydrocodone to rogue Internet
19 pharmacies.

20 MS. HENN: Objection to form.

21 And, Counsel, I'll just ask you
22 to let him finish his answers so that
23 he can get his answers out.

24 MR. FARRELL: Yes, ma'am.

25 THE WITNESS: Again, I don't

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1 have the specific examples. I believe
2 that to be true, but I don't know the
3 specific details.

4 QUESTIONS BY MR. FARRELL:

5 Q. The next page, page 4,
6 "Internet pharmacies." It says,
7 "Investigative work hours have doubled."

8 Do you know what it doubled
9 from or to?

10 A. I do not.

11 Q. "Cutting supply critical to
12 success."

13 What does that mean?

14 A. I don't know. I don't know
15 what the speaking points or -- it's one
16 bullet. I'm not sure how it was represented
17 or communicated.

18 Q. Do you know what price
19 diversion is?

20 A. Not specifically.

21 Q. Was McKesson at this time
22 considering that some of the Internet
23 pharmacies were competing with McKesson for
24 business?

25 MS. HENN: Objection to form.

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1 THE WITNESS: I do not know.
 2 Pricing is not my area.
 3 QUESTIONS BY MR. FARRELL:
 4 Q. Okay. It says, "Wholesalers.
 5 DEA expects that you know your customers."
 6 What does that mean? It's in
 7 quotations.
 8 A. Right.
 9 MS. HENN: Objection to form.
 10 MR. FARRELL: Well, it is in
 11 quotations, isn't it?
 12 MS. HENN: I was objecting to
 13 asking what DEA means when they said
 14 "know your customers." That was what
 15 was my objection.
 16 QUESTIONS BY MR. FARRELL:
 17 Q. So McKesson is writing a slide
 18 following a meeting with the DEA, reporting
 19 to the DEA employees what the DEA's focus
 20 was, and what McKesson is reporting is that
 21 the DEA expects you to know your customers.
 22 Is that fair?
 23 A. That's fair.
 24 Q. And when we do, quote, "know
 25 our customers," end quote, that's a tag line

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1 for distributors with regard to knowing the
 2 customers you're selling opium pills to?
 3 MS. HENN: Objection to form.
 4 THE WITNESS: That is a DEA tag
 5 line.
 6 QUESTIONS BY MR. FARRELL:
 7 Q. And then the next sentence, can
 8 you read it out loud, please?
 9 A. The next bullet?
 10 Q. Yes.
 11 A. "Wholesalers accountable for
 12 controlling quantities shipped."
 13 Q. Is that true or not true?
 14 MS. HENN: Objection to form.
 15 THE WITNESS: Can you add a
 16 little more context to your question?
 17 I know it's a true/false question,
 18 but --
 19 QUESTIONS BY MR. FARRELL:
 20 Q. Yes.
 21 The DEA expects the wholesalers
 22 to be accountable for controlling quantities
 23 that they ship.
 24 Is that fair or unfair?
 25 MS. HENN: Objection to form.

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1 Go ahead.
 2 THE WITNESS: That's what
 3 the -- that's what the DEA expects, I
 4 guess, yeah.
 5 QUESTIONS BY MR. FARRELL:
 6 Q. Does McKesson acknowledge that
 7 it is accountable for controlling the
 8 quantities of opium pills shipped to American
 9 pharmacies?
 10 A. We're accountable as a
 11 distributor.
 12 Q. The next thing says, "5,000
 13 dose units is average."
 14 The average American pharmacy
 15 in 2007, as reported by the DEA to McKesson,
 16 was that 5,000 doses of oxycodone or 5,000
 17 doses of hydrocodone was average.
 18 A. That's what the DEA -- DEA
 19 calculations.
 20 Q. And McKesson at least validated
 21 that number by repeating it on a slide to the
 22 national operations conference in 2007.
 23 MS. HENN: Objection to form.
 24 QUESTIONS BY MR. FARRELL:
 25 Q. Agreed?

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1 A. I wouldn't say that they
 2 validated. We just repeated what was shared.
 3 Q. Did McKesson undertake any
 4 investigation to determine what the average
 5 was itself?
 6 A. I believe they did. I can't
 7 speak to the examples, but we've used
 8 analysts and reviewed data when developing
 9 thresholds and...
 10 Q. Does McKesson acknowledge that
 11 in 2007 5,000 dose units was average in the
 12 United States of America?
 13 MS. HENN: Objection to form.
 14 Outside the scope.
 15 THE WITNESS: We acknowledge
 16 that's what the DEA shared. I mean,
 17 there's many ways to get averages.
 18 QUESTIONS BY MR. FARRELL:
 19 Q. Sitting here today, does
 20 McKesson Corporation have any reason to
 21 disagree or dispute the DEA's estimation of
 22 what the average dose unit was?
 23 MS. HENN: Objection to form.
 24 Outside the scope.
 25 THE WITNESS: What I would

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1 share is I believe that average is a
 2 very rudimentary average, all
 3 pharmacies divided by pills, and so it
 4 doesn't account for different pharmacy
 5 size. So it's the number that is the
 6 result of that basic calculation.
 7 QUESTIONS BY MR. FARRELL:
 8 Q. And as we saw from your prior
 9 correspondence, McKesson was relying upon
 10 that average when it estimated its threshold
 11 of 8,000 units per month per pharmacy?
 12 MS. HENN: Objection to form.
 13 THE WITNESS: It was using that
 14 data point. I mean not relying on
 15 that number solely but using that as
 16 one data point.
 17 QUESTIONS BY MR. FARRELL:
 18 Q. So the answer is yes?
 19 MS. HENN: Objection to form.
 20 THE WITNESS: Not yes to that
 21 fact we relied on it. We used the
 22 data point.
 23 QUESTIONS BY MR. FARRELL:
 24 Q. So McKesson Corporation used
 25 the 5,000 dose unit as an average supplied

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1 the DEA as a data point when it set a
 2 threshold of 8,000 units per pharmacy per
 3 month?
 4 A. I would say that's fair.
 5 Q. The next page, page 5,
 6 "McKesson Involvement, September 5th DEA
 7 meeting in Washington, DC, outlined Internet
 8 issue."
 9 Have you reviewed any documents
 10 pertaining to that meeting or the Internet
 11 issue that's being referenced?
 12 A. I don't believe so.
 13 Q. Neither have I, because it
 14 hasn't been produced, because I'm sure
 15 counsel is going to argue it falls outside of
 16 Discovery Decision Number 3.
 17 The next one, "November 5, DEA
 18 notified McKesson, six pharmacies in Florida,
 19 excessive hydrocodone."
 20 Have you seen that
 21 correspondence?
 22 A. I can't recall if I've seen
 23 that specific one.
 24 Q. You thinking about the one we
 25 just read? That was April of 2007. This one

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1 is talking about a November 5th
 2 correspondence.
 3 A. I don't recall.
 4 Q. The next one, "January 6, 2007,
 5 meeting with DEA in Washington, DC."
 6 And would you read what the
 7 bullet point says?
 8 A. "Clear message from DEA."
 9 Q. So at this point in time,
 10 McKesson is acknowledging to its entire
 11 national operations conference that the
 12 message they're receiving from the DEA was
 13 clear?
 14 MS. HENN: Objection to form.
 15 Outside the scope.
 16 THE WITNESS: Like parts of the
 17 message, sure.
 18 QUESTIONS BY MR. FARRELL:
 19 Q. So which parts were unclear?
 20 A. I don't know all of the message
 21 that were communicated from DEA and how they
 22 were communicated.
 23 Q. We can start with the
 24 November 2006 letter from Joe Rannazzisi.
 25 Certainly if there was some unclear message

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1 that was being sent, it would be at least
 2 like a footnote here, right? Instead it
 3 says, "Clear message from DEA."
 4 MS. HENN: Objection to form.
 5 Outside the scope.
 6 THE WITNESS: I don't know that
 7 I -- I don't know what was
 8 specifically discussed in that
 9 specific meeting, so I don't know the
 10 types of messages that were shared in
 11 that meeting.
 12 QUESTIONS BY MR. FARRELL:
 13 Q. As of April of 2007, which we
 14 believe to be the date of this conference,
 15 have you seen any documentation anywhere in
 16 the records of McKesson Corporation that
 17 indicate that any message from the DEA to
 18 date had been unclear?
 19 MS. HENN: Objection to form.
 20 Outside the scope.
 21 THE WITNESS: Have I seen
 22 formal documentation where somebody
 23 said DEA was unclear?
 24 QUESTIONS BY MR. FARRELL:
 25 Q. That was my question, yes.

| | |
|--|---|
| <p style="text-align: right;">Page 234</p> <p>1 A. I have not seen any of that 2 documentation. 3 Q. "October '06, order to show 4 cause. Response, settle." 5 That's the message McKesson is 6 telling its national operations conference, 7 is they get an order to show cause from the 8 DEA, and your response is to enter into a 9 memorandum of understanding? 10 MS. HENN: Objection to form. 11 THE WITNESS: I don't know what 12 the context of the communication at -- 13 this is one bullet point at a meeting 14 presented to a group. So there's 15 certainly speaking points and an 16 explanation. I -- so... 17 QUESTIONS BY MR. FARRELL: 18 Q. Fair enough. 19 Next page, page 6, "Current 20 Status, April '07, meeting with DEA 21 attorneys. What we have done: Created new 22 report in process." 23 This gets back to my earlier 24 questions of this new process is the 25 Lifestyle Drug Monitoring Program?</p> | <p style="text-align: right;">Page 236</p> <p>1 this is what you're going to do to fulfill 2 your obligations under federal law. 3 MS. HENN: Objection to form. 4 THE WITNESS: I'd say that's 5 what we're doing to enhance our 6 knowledge of our customers and meet 7 our requirements and enhance our 8 program. 9 QUESTIONS BY MR. FARRELL: 10 Q. You're making it sound like 11 this was just a voluntary effort out of the 12 thin air. This was in response to the DEA 13 charging McKesson with misconduct. 14 MS. HENN: Objection to form. 15 THE WITNESS: I understand 16 that. 17 QUESTIONS BY MR. FARRELL: 18 Q. You agree? 19 A. Agree. 20 Q. Now, page 9, "Daily dosage 21 summary report." This is an important point, 22 "8,000 dose unit threshold." But above 23 that -- next page, not 8, the next page. 24 A. 9? 25 Q. Yeah.</p> |
| <p style="text-align: right;">Page 235</p> <p>1 A. Correct. 2 Q. It's a new process? 3 A. It is. 4 Q. Not a revision, not an 5 amendment, not a modification, not a -- 6 what's the other word you used? 7 A. I called it an addition to the 8 existing program. 9 Q. Okay. 10 A. An enhancement. 11 Q. Next page, page 7, "Establish 12 threshold for excessive quantities, 8,000 13 dose units. Thorough due diligence of 14 customers exceeding threshold." 15 You agree this is, in fact, 16 what the law requires? 17 MS. HENN: Objection to form. 18 Outside the scope. 19 THE WITNESS: Could you ask 20 that again? This -- is it this 21 specific bullet you're talking about? 22 QUESTIONS BY MR. FARRELL: 23 Q. Yeah, this is McKesson's 24 Lifestyle Drug Monitoring Program, which is 25 an action plan submitted to the DEA to show</p> | <p style="text-align: right;">Page 237</p> <p>1 "8,000 dose unit threshold, 2 generic base code." What this means is is 3 that McKesson, when its calculating the 4 threshold, is doing it by generic base code, 5 meaning you don't get 8,000 oxy 10s and 8,000 6 oxy 20s and 8,000 oxy 40s; you get 8,000 7 oxys. 8 A. Correct. With that base 9 ingredient. 10 Q. Based on a four-digit base code 11 that -- provided by the DEA? 12 A. Yes. 13 (McKesson-Hartle Exhibit 19 14 marked for identification.) 15 QUESTIONS BY MR. FARRELL: 16 Q. We'll mark as 19, top 17 right-hand corner is 2007_5_15, Bates-stamped 18 MCKMDL00337303. 19 Is this, in fact, the Lifestyle 20 Drug Monitoring Program at McKesson? 21 A. Yes. 22 Q. Do you recognize this document 23 as a true and authentic version of the 24 Lifestyle Drug Monitoring Program? 25 A. I do.</p> |

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1 Q. And is it a document kept in
 2 the regular course of business and produced
 3 by your lawyers in this litigation?
 4 MS. HENN: Objection to form.
 5 THE WITNESS: Yeah.
 6 QUESTIONS BY MR. FARRELL:
 7 Q. You'll note under "reports,"
 8 under "generic ingredient, base code and
 9 dosage threshold," it's again affirming what
 10 you've told the DEA you're going to do, and
 11 that is you're going to set 8,000 doses as
 12 the threshold per base code.
 13 A. Correct.
 14 Q. The bottom right-hand corner,
 15 you'll see a date generated.
 16 What does it say?
 17 A. May 16, 2007.
 18 (McKesson-Hartle Exhibit 20
 19 marked for identification.)
 20 QUESTIONS BY MR. FARRELL:
 21 Q. Exhibit 20, top right-hand
 22 corner, 2007_06_12, Bates-stamped
 23 MCKMDL00355527.
 24 I'll represent to you again,
 25 this was produced by your counsel in this

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1 litigation. It is another communication
 2 dated June 12, 2007, by McKesson's lawyer to
 3 the DEA. And this is an update regarding the
 4 progress of the implementation of the
 5 Lifestyle Drug Monitoring Program.
 6 In the second sentence it
 7 states, "As I stated in our last
 8 conversation, McKesson has implemented this
 9 program nationally, in quote, across its 30
 10 distribution centers throughout the country."
 11 Again, does this imply to you
 12 that you were not implementing a national
 13 policy prior to this?
 14 MS. HENN: Objection to form.
 15 THE WITNESS: It implies we
 16 weren't implementing this specific new
 17 policy across the country.
 18 QUESTIONS BY MR. FARRELL:
 19 Q. Page 21 is a copy of a sample
 20 letter you told the DEA you were sending
 21 across the country. And in the second full
 22 paragraph, starting with the word
 23 "pharmaceutical," it says --
 24 A. I'm sorry, what page was that?
 25 Q. Page 21.

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1 It says, "Pharmaceutical
 2 wholesalers, including McKesson, are being
 3 held accountable for controlling the
 4 qualities of these drugs -- quantities of
 5 these drugs shipped to customers and will be
 6 held responsible for reviewing trends as
 7 indicated by the customer's order history."
 8 This is 2007, in an
 9 acknowledgement by McKesson that it will be
 10 held accountable for excessive orders,
 11 agreed?
 12 MS. HENN: Objection to the
 13 form.
 14 THE WITNESS: Agreed.
 15 QUESTIONS BY MR. FARRELL:
 16 Q. And then the next paragraph you
 17 go so far as to say, "Shipment and monitoring
 18 of these drugs will be measured by dose units
 19 rather than sale units, with 8,000 dose units
 20 as the threshold for excessive quantities."
 21 So again, this is a recognition
 22 that above 8,000 units of oxycodone and
 23 hydrocodone is presumptively excessive, which
 24 will trigger your three-level due diligence?
 25 A. Correct.

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1 Q. The following page, page 22, is
 2 an actual declaration, an affidavit that
 3 you're asking people to sign about the
 4 reasons they want to sell more than 8,000
 5 pills.
 6 A. Correct.
 7 Q. And on page 25 is a pharmacy
 8 questionnaire presumably sent to every
 9 pharmacy in the country that was a customer
 10 of McKesson, asking for certain data about
 11 the controlled substances they're purchasing
 12 from McKesson.
 13 MS. HENN: Objection to form.
 14 QUESTIONS BY MR. FARRELL:
 15 Q. This is what you're telling the
 16 DEA that you'll be doing from here on out
 17 starting in 2007.
 18 A. I don't know if this pharmacy
 19 questionnaire was sent to every single
 20 pharmacy. Chains are a little bit different.
 21 Q. I think we'll get into that
 22 tomorrow.
 23 A. Okay. I'm sure we will.
 24 Q. But in general, you're sending
 25 it out to all the independent pharmacies at

| | |
|--|--|
| <p style="text-align: right;">Page 242</p> <p>1 least, agreed?</p> <p>2 A. I actually don't know what the</p> <p>3 schedule was and the communication plan. And</p> <p>4 if you can point me to where we...</p> <p>5 Q. All I'm suggesting is that you</p> <p>6 were telling the DEA that you're going to be</p> <p>7 these things.</p> <p>8 A. We're going to use</p> <p>9 questionnaires to gather more information on</p> <p>10 our customers.</p> <p>11 Q. Right.</p> <p>12 (McKesson-Hartle Exhibit 21</p> <p>13 marked for identification.)</p> <p>14 QUESTIONS BY MR. FARRELL:</p> <p>15 Q. Next document is 21. Top</p> <p>16 right-hand corner, 2007_11_26. This is a</p> <p>17 February 2008 PowerPoint presentation</p> <p>18 entitled "Controlled Substance Monitoring</p> <p>19 Program, CSMP, Implementation Strategy -</p> <p>20 Regulatory Review Document."</p> <p>21 Have you seen this document</p> <p>22 before?</p> <p>23 A. I don't believe I've seen this</p> <p>24 document.</p> <p>25 Q. All right.</p> | <p style="text-align: right;">Page 244</p> <p>1 Monitoring Program. It's going to be a pilot</p> <p>2 program in Denver in March of 2008 and then</p> <p>3 rolled out across the country?</p> <p>4 MS. HENN: Objection to form.</p> <p>5 THE WITNESS: Yes, it's going</p> <p>6 to be an enhancement to the Lifestyle</p> <p>7 Drug Monitoring Program, piloted,</p> <p>8 rolled out, ultimately replaces.</p> <p>9 QUESTIONS BY MR. FARRELL:</p> <p>10 Q. What's the main difference</p> <p>11 between the CSMP in 2008 and Lifestyles 2007?</p> <p>12 A. The main difference is the</p> <p>13 addition of -- expanding upon that threshold</p> <p>14 concept. In the Lifestyle Drug Monitoring</p> <p>15 Program there's four base codes that are</p> <p>16 used, and those trigger reports.</p> <p>17 The CSMP establishes a</p> <p>18 threshold for every single base code for all</p> <p>19 controlled substances, and it is a hard stop,</p> <p>20 block -- you know, if a customer exceeds --</p> <p>21 attempts to exceed that threshold, it is a</p> <p>22 hard stop and block of that order. So it</p> <p>23 really takes the threshold concept to the</p> <p>24 next level.</p> <p>25 Q. I thought we were already</p> |
| <p style="text-align: right;">Page 243</p> <p>1 A. No.</p> <p>2 Q. It's my understanding that the</p> <p>3 CSMP was going to replace the Lifestyles</p> <p>4 program?</p> <p>5 A. Correct.</p> <p>6 Q. And this document is talking</p> <p>7 about in March of 2008 you're going to be</p> <p>8 implementing pilot programs and then rolling</p> <p>9 it across the country?</p> <p>10 MS. HENN: Objection to form.</p> <p>11 QUESTIONS BY MR. FARRELL:</p> <p>12 Q. Why it's called "Denver Pilot"</p> <p>13 at the top.</p> <p>14 My question to you is: Why did</p> <p>15 you replace --</p> <p>16 A. Can I finish reading this?</p> <p>17 Q. Sure.</p> <p>18 A. Pretty quickly. Thank you.</p> <p>19 Okay. Thank you.</p> <p>20 Q. Yeah.</p> <p>21 So you agree with what I said?</p> <p>22 A. You'll need to restate whatever</p> <p>23 you said.</p> <p>24 Q. It appears that the -- this</p> <p>25 CSMP is the replacement to the Lifestyle Drug</p> | <p style="text-align: right;">Page 245</p> <p>1 blocking excessive purchases above 8,000 in</p> <p>2 the absence of due diligence.</p> <p>3 A. It's a systematic block. The</p> <p>4 system is blocking it.</p> <p>5 Q. Troy wants to know what that</p> <p>6 means.</p> <p>7 A. What a systematic block means?</p> <p>8 It means exactly what it -- it's done by the</p> <p>9 system. So a customer orders, orders</p> <p>10 accumulate against their threshold amount,</p> <p>11 and if an order goes over the threshold</p> <p>12 amount or would put them over the threshold</p> <p>13 amount, the system by itself recognizes that,</p> <p>14 blocks it, does not ship it.</p> <p>15 (McKesson-Hartle Exhibit 22</p> <p>16 marked for identification.)</p> <p>17 QUESTIONS BY MR. FARRELL:</p> <p>18 Q. This is Exhibit 22. Top right,</p> <p>19 2007_12_6, Bates-stamped MCKMDL00355041.</p> <p>20 This is another version of the Lifestyle Drug</p> <p>21 Monitoring Program, and what I'm -- you may</p> <p>22 not know the answer to this, but on the very</p> <p>23 last page, page 10, it has revision 1.7 dated</p> <p>24 December 6, 2007, added threshold guidelines.</p> <p>25 But then when you look on page 1, it appears</p> |

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1 to have removed the thresholds for oxycodone
2 and hydrocodone.
3 Can you help me understand
4 that?
5 A. Sure.
6 There were components of the
7 Lifestyle Drug Monitoring Program that
8 carried over into the CSMP, i.e., the level
9 1, 2, 3 reviews.
10 What changed from a threshold
11 perspective is that in the Lifestyle Drug
12 Monitoring Program it was just those four
13 base codes, and it was to generate reports
14 when orders would -- went over that amount
15 and -- to trigger the due diligence review.
16 And so the CSMP, in essence,
17 for these four base codes, these became hard
18 coded thresholds in the new program. And so
19 it's really just a transition of certain
20 elements of the Lifestyle Drug Program into
21 the next one, if that helps, if that makes...
22 (McKesson-Hartle Exhibit 23
23 marked for identification.)
24 QUESTIONS BY MR. FARRELL:
25 Q. Next document, Exhibit 23,

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1 2007_12_27, Bates stamp MCKMDL00478910. This
2 is the December 27, 2007 Rannazzisi letter.
3 Do you recognize this document?
4 A. I do.
5 Q. McKesson Corporation
6 acknowledges receipt of this communication
7 from the DEA dated December 27, 2007,
8 correct?
9 MS. HENN: Objection to form.
10 THE WITNESS: Yes, we received
11 it.
12 QUESTIONS BY MR. FARRELL:
13 Q. This is a true and authentic
14 version of the McKesson letter?
15 A. I believe so.
16 Q. And you kept it in the routine
17 business of collecting records,
18 record-keeping at McKesson?
19 A. I can't speak to where this was
20 stored and -- I don't know, but --
21 Q. But it came from McKesson; it's
22 got your Bates stamp on it?
23 A. I may be a little confused on
24 your question.
25 Q. I just want you to validate --

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1 A. It came us.
2 Q. You're just acknowledging you
3 received this letter?
4 A. Correct.
5 Q. All right. We can walk through
6 this entire letter, but I'm going to first
7 start broadly.
8 Does McKesson acknowledge that
9 the facts and guidelines set forth in the
10 2007 Rannazzisi letter are true and an
11 accurate representation of the obligations
12 McKesson has under federal law?
13 MS. HENN: Objection to form.
14 THE WITNESS: Can you ask that
15 question again?
16 QUESTIONS BY MR. FARRELL:
17 Q. Yeah.
18 This is the second time the DEA
19 is writing a dear registrant letter to
20 everybody in the country.
21 A. Understood.
22 Q. Basically what it's saying is,
23 you people still aren't getting it; here's
24 what your obligations are under federal law.
25 And it includes the duty to

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1 halt suspicious orders, perform due diligence
2 and report when necessary to the DEA, agreed?
3 MS. HENN: Objection to form.
4 QUESTIONS BY MR. FARRELL:
5 Q. Could it be any clearer?
6 MS. HENN: Objection to form.
7 THE WITNESS: It's the same
8 information they've shared before,
9 with some additions.
10 QUESTIONS BY MR. FARRELL:
11 Q. And it's clear, you have a duty
12 to halt suspicious orders, perform due
13 diligence and report when necessary.
14 This is an affirmation a decade
15 preceding the shipping requirement and the
16 reporting requirement in the Masters
17 Pharmaceutical case, agreed?
18 MS. HENN: Objection to form.
19 THE WITNESS: You rolled a
20 couple things in there together. Can
21 you ask me -- what's the specific
22 question?
23 QUESTIONS BY MR. FARRELL:
24 Q. This is a 2007 letter, which
25 predates the Masters Pharmaceutical case by a

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1 decade. And I'm asking you whether or not
2 you agree that this letter sets forth the
3 shipping requirements and the reporting
4 requirements as outlined in Masters
5 Pharmaceutical.
6 MS. HENN: Objection to form.
7 THE WITNESS: I'm going to read
8 this again just so --
9 QUESTIONS BY MR. FARRELL:
10 Q. Sure.
11 The second to the last
12 paragraph is probably the most helpful.
13 A. What's that?
14 Q. The second to last paragraph
15 may be the most helpful.
16 A. On the very last -- okay.
17 Before I get there --
18 Q. It states, "Lastly, registrants
19 that routinely report suspicious orders, yet
20 fill these orders without first determining
21 that order is not being diverted, may be
22 failing to maintain effective controls
23 against diversion."
24 It's what you and I have been
25 talking about for the last two hours,

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1 correct?
2 A. Correct.
3 Q. This is an accurate statement
4 of federal law from the DEA to McKesson,
5 agreed?
6 MS. HENN: Objection to form.
7 THE WITNESS: Agreed.
8 QUESTIONS BY MR. FARRELL:
9 Q. This is the same thing the DC
10 Circuit Court of Appeals said in 2017,
11 agreed?
12 MS. HENN: Objection to form.
13 THE WITNESS: Agreed.
14 QUESTIONS BY MR. FARRELL:
15 Q. I don't need to put this in
16 there. But backing up to the last exhibit we
17 had from February of 2008, can you pull that
18 up?
19 MS. HENN: You talking about
20 Exhibit 21?
21 MR. FARRELL: Yes.
22 QUESTIONS BY MR. FARRELL:
23 Q. I'm going to represent to you
24 that the way that we pull these documents up
25 on the electronic system is you can pull it

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1 up in a -- basically a photocopy version like
2 you're seeing here, but there's also a native
3 format, which is actually the PowerPoint.
4 A. Okay.
5 Q. And so what I'm showing you on
6 the screen is the same exact document, and
7 the only reason I produced it in native
8 format is that at the very bottom of each of
9 the pages, except for the first one, there's
10 a date.
11 MR. FARRELL: So if you flip to
12 the next page on the screen up there,
13 Corey.
14 MS. HENN: Do you want to just
15 hand the copy over --
16 MR. FARRELL: Yeah.
17 MS. HENN: -- if that's easier?
18 MR. FARRELL: I just want you
19 to affirm the date on it.
20 MS. HENN: And do you have like
21 an identifier? I know for these kinds
22 of native documents --
23 MR. FARRELL: Not that I can
24 figure out. I'm not that good.
25 MS. HENN: All right.

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1 THE WITNESS: So what do you
2 need me to do? What are you asking?
3 QUESTIONS BY MR. FARRELL:
4 Q. What the date is.
5 A. On the front page?
6 Q. On the color version, on page 2
7 maybe.
8 A. Oh, on the bottom? 11/26 of
9 '07. November 26, 2007.
10 (McKesson-Hartle Exhibit 24
11 marked for identification.)
12 QUESTIONS BY MR. FARRELL:
13 Q. Okay. The next exhibit is
14 going to be Exhibit 24. It's 2008_03_10.
15 It's another PowerPoint presentation at the
16 Denver sales meeting, March 10, 2008.
17 Have you seen this document
18 before?
19 A. I do not believe I've seen this
20 one.
21 Q. It has a bunch of redacted
22 stuff in here.
23 MR. FARRELL: Counsel, do you
24 know if that was recorded in the
25 privilege log?

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1 MS. HENN: I don't know off the
2 top of my head, but we can certainly
3 check.
4 MR. FARRELL: I think that's
5 the main reason. It basically is
6 talking about your CSMP, the
7 three-level review, and the rollout
8 with a bunch of stuff redacted. I
9 just wanted to put it in the record so
10 we can fool with it later.
11 MS. HENN: Is this a good --
12 the witness would like a break.
13 MR. FARRELL: Sure.
14 MS. HENN: Could we just maybe
15 pause for just five minutes?
16 MR. FARRELL: Yep.
17 VIDEOGRAPHER: The time is
18 3:08 p.m. We're going off the record.
19 (Off the record at 3:08 p.m.)
20 VIDEOGRAPHER: The time is
21 3:16 p.m. We're back on the record.
22 (McKesson-Hartle Exhibit 25
23 marked for identification.)
24 QUESTIONS BY MR. FARRELL:
25 Q. We'll mark Exhibit 25. It's a

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1 2008_05_02, Bates stamp MCKMDL00355561.
2 Do you recognize this document?
3 A. I do.
4 Q. What is it?
5 A. It's the settlement agreement
6 from 2008.
7 Q. Between?
8 A. Between McKesson and the DEA,
9 DOJ.
10 Q. Settling what?
11 A. Settling allegations of things
12 related to our responsibilities as a
13 distributor.
14 Q. Right.
15 So you'll forgive me for
16 spending so much time for the last several
17 hours building up to the duties and
18 responsibilities under the federal
19 regulations, leading up to May 2, 2008, where
20 you signed a memorandum -- administrative
21 memorandum of agreement paying a \$13 million
22 fine for allegedly violating all of those
23 rules we've been discussing.
24 MS. HENN: Objection to form.
25

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1 QUESTIONS BY MR. FARRELL:
2 Q. And I'll acknowledge on page 2
3 the middle whereas clause that McKesson
4 denied doing anything wrong.
5 Sitting here today, McKesson
6 continue to assert that it did nothing wrong
7 despite the fact that it paid a fine in 2008?
8 MS. HENN: Objection to form.
9 THE WITNESS: We do. I believe
10 we were in good faith working with DEA
11 and denied the allegations.
12 QUESTIONS BY MR. FARRELL:
13 Q. So you deny you did anything
14 wrong. You deny you broke the law?
15 MS. HENN: Objection to form.
16 THE WITNESS: I stand behind
17 what's in this document.
18 QUESTIONS BY MR. FARRELL:
19 Q. Now, you weren't at McKesson,
20 but you're sitting here as McKesson, so
21 you're taking the position that's in the
22 document: We didn't do anything wrong.
23 But you acknowledge that at
24 least in 2008 the DEA -- it's beyond doubt
25 now what the DEA could possibly mean when

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1 they want you to fulfill your obligations
2 under federal law, agreed?
3 MS. HENN: Objection to form.
4 THE WITNESS: It is beyond
5 doubt -- can you say that again?
6 Rephrase it?
7 QUESTIONS BY MR. FARRELL:
8 Q. I can rephrase it, yes.
9 A. Yeah.
10 Q. I'm trying to establish whether
11 or not McKesson Corporation believes as of
12 May 2, 2008, the DEA could be any clearer
13 about its expectations of McKesson
14 Corporation under the federal regulations
15 related to the distribution of opium pills.
16 MS. HENN: Objection to form.
17 Outside the scope.
18 QUESTIONS BY MR. FARRELL:
19 Q. I can walk through all of the
20 various communications leading up to this,
21 but you'll agree with me there was a 2006
22 letter, a 2007 letter, there were
23 presentations, there were meetings, there was
24 a rule to show cause, there's a settlement
25 agreement, you got fined \$13 million.

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1 Nobody, no reasonable person,
2 could say that the DEA failed to tell
3 McKesson what the rules of the road were.

4 MS. HENN: Objection to form.
5 Outside the scope.

6 THE WITNESS: I agree that they
7 mentioned that in many -- in many ways
8 and many times. There's still -- you
9 know, there are areas of the
10 regulation that are still unclear, and
11 DEA does not provide clear guidance on
12 what is an order of unusual size,
13 frequency and pattern. They put that
14 back on the distributors to design our
15 own.

16 So they're not -- they're clear
17 on that guidance, but not on how to do
18 it all the time.

19 QUESTIONS BY MR. FARRELL:

20 Q. All right. So it's clear in
21 2008 what they're telling the DEA -- telling
22 McKesson is that whatever you're doing, we
23 think it's not enough?

24 MS. HENN: Objection to form.

25 THE WITNESS: It's clear that

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1 QUESTIONS BY MR. FARRELL:

2 Q. Yes.

3 Would you be a moron if you
4 took the position out of May 2, 2008, that
5 the DEA was unclear as to whether or not you
6 could ship a suspicious order?

7 MS. HENN: Objection to form.

8 Outside the scope.

9 THE WITNESS: I wouldn't call
10 anybody a moron, but it's clear what
11 they expect.

12 QUESTIONS BY MR. FARRELL:

13 Q. And they expect what?

14 A. To design and operate a system
15 to disclose suspicious orders.

16 Q. And?

17 MS. HENN: Objection to form.

18 THE WITNESS: And report.

19 QUESTIONS BY MR. FARRELL:

20 Q. And?

21 MS. HENN: Same objection.

22 QUESTIONS BY MR. FARRELL:

23 Q. Is it clear whether or not you
24 can ship a suspicious order without
25 conducting due diligence?

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1 that's what they were alleging.

2 QUESTIONS BY MR. FARRELL:

3 Q. And one of the things that's
4 clear is that you have a duty to halt
5 suspicious orders and perform due diligence.

6 Is there any reasonable person
7 in the United States of America as of 2008
8 could possibly argue that it's unclear
9 whether or not you should halt a suspicious
10 order before shipping?

11 MS. HENN: Objection to form.

12 THE WITNESS: I can't speak for
13 all reasonable people in the US.

14 QUESTIONS BY MR. FARRELL:

15 Q. Well, what if somebody came up
16 and said, "We don't know whether or not we
17 have a duty to halt before shipping a
18 suspicious order," what you say to them as of
19 May 2, 2008, on the heels of paying
20 \$13 million to the DEA?

21 MS. HENN: Objection to form.

22 Outside the scope.

23 THE WITNESS: Can you ask that
24 again?
25

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1 MS. HENN: Objection to form.
2 Outside the scope.

3 THE WITNESS: I think it
4 depends. It's -- there are other
5 types of suspicious order systems.

6 QUESTIONS BY MR. FARRELL:

7 Q. I understand. I'm just trying
8 to take it from a very basic standpoint.

9 Could the DEA have made it any
10 clearer that McKesson has a duty to monitor
11 and detect suspicious orders?

12 MS. HENN: Objection to form.

13 Outside the scope.

14 THE WITNESS: To monitor and
15 detect suspicious orders.

16 QUESTIONS BY MR. FARRELL:

17 Q. That's what it says.

18 A. Very clear.

19 Q. Could they have been any
20 clearer that if you get a suspicious order,
21 you can't just ship it?

22 MS. HENN: Objection to form.

23 Outside the scope.

24 THE WITNESS: That's clear.
25

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1 QUESTIONS BY MR. FARRELL:
 2 Q. Clear or very clear?
 3 MS. HENN: Objection to form.
 4 THE WITNESS: It's very clear.
 5 QUESTIONS BY MR. FARRELL:
 6 Q. Can you report the suspicious
 7 order to the DEA and still ship it?
 8 MS. HENN: Objection to form.
 9 Outside the scope.
 10 THE WITNESS: Can you ask that
 11 one again or restate it?
 12 QUESTIONS BY MR. FARRELL:
 13 Q. Can you report the suspicious
 14 order to the DEA and still ship it?
 15 MS. HENN: Same objections.
 16 THE WITNESS: Without due
 17 diligence or some sort of review?
 18 QUESTIONS BY MR. FARRELL:
 19 Q. If you're reporting a
 20 suspicious order to the DEA, what are you
 21 doing?
 22 MS. HENN: Objection to form.
 23 THE WITNESS: Okay. Can we
 24 start with the original question? I'm
 25 getting a little -- I want to make

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1 sure I'm going to answer your question
 2 right --
 3 QUESTIONS BY MR. FARRELL:
 4 Q. Yeah, I'm going to show you --
 5 A. -- the right question.
 6 Q. I'm going to show you here in a
 7 few minutes some of your brethren who still
 8 haven't gotten the message by May 2008, and
 9 I'm trying to see if you'll call them morons.
 10 So what I'm asking you is from
 11 McKesson's corporation, is it clear by May 2,
 12 2008, you -- the shipping requirement and the
 13 reporting requirement?
 14 MS. HENN: Objection to form.
 15 Outside the scope.
 16 THE WITNESS: That's how we
 17 designed our program, and that's what
 18 we believed it to be.
 19 QUESTIONS BY MR. FARRELL:
 20 Q. Based on federal law?
 21 MS. HENN: Objection to form.
 22 THE WITNESS: Based on the
 23 regulations and the guidance and the
 24 information we collected.
 25 (McKesson-Hartle Exhibit 26

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1 marked for identification.)
 2 QUESTIONS BY MR. FARRELL:
 3 Q. I'll mark Exhibit 26. Top
 4 right is 2008_07_031. It's Bates stamp
 5 MCK-HOI-002-0000042.
 6 Have you seen this document
 7 before?
 8 A. Yes, I have.
 9 Q. And what is it?
 10 A. This is a PowerPoint.
 11 Q. Made by who?
 12 A. By McKesson.
 13 Q. For purposes of?
 14 A. Discussion with DEA.
 15 Q. Regarding?
 16 A. Our controlled substance
 17 monitoring program.
 18 Q. And it's dated when?
 19 A. It's dated July 31, 2008.
 20 Q. So this is before or after your
 21 settlement agreement with the DEA?
 22 A. Shortly after.
 23 Q. So that must have been kind of
 24 awkward, right, your coming in after paying
 25 the fine?

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1 What are you doing here? Are
 2 you giving the DEA an update of all of the
 3 parts of your action plan you're
 4 implementing?
 5 MS. HENN: Objection to form.
 6 THE WITNESS: I can't say if it
 7 was awkward or not, but standard -- or
 8 a communication and updating them on
 9 what we were doing.
 10 QUESTIONS BY MR. FARRELL:
 11 Q. Go to page 004. Roman numeral
 12 number III, "Block orders that exceed
 13 thresholds."
 14 That's because you have a duty
 15 to halt suspicious orders, correct?
 16 MS. HENN: Objection to form.
 17 Outside the scope.
 18 THE WITNESS: That's how we
 19 designed our new program, to block.
 20 QUESTIONS BY MR. FARRELL:
 21 Q. And is that a requirement of
 22 federal law?
 23 A. It's our interpretation of how
 24 we --
 25 MS. HENN: Same objection.

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1 Go ahead.
2 THE WITNESS: Our
3 interpretation of how -- what we
4 thought we needed to do with our
5 program.
6 QUESTIONS BY MR. FARRELL:
7 Q. Page 5. In April of 2007, you
8 created your three-tier review process.
9 Do you see that?
10 A. Correct. Yep.
11 Q. That means prior to that, you
12 didn't have a three-tier review process --
13 MS. HENN: Objection to form.
14 QUESTIONS BY MR. FARRELL:
15 Q. -- under Section 55.
16 MS. HENN: Objection to form.
17 THE WITNESS: We did not. We
18 had a different process.
19 QUESTIONS BY MR. FARRELL:
20 Q. September 2007, DEA meeting
21 triggered new development. This is your new
22 CSMP, and this is what you're describing to
23 the DEA, agree?
24 A. Agree.
25 Q. Bate Stamp 8. If you're over

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1 your threshold, what happens to your order?
2 A. It gets blocked.
3 Q. Why?
4 A. That's the design of our
5 system.
6 Q. For what purpose?
7 A. To report suspicious orders --
8 Q. Why is that important?
9 A. -- block.
10 To prevent diversion, to play a
11 role in preventing diversion.
12 Q. The more pills that get
13 diverted, what happens?
14 MS. HENN: Objection to form.
15 THE WITNESS: You can assume
16 that there's more abuse.
17 QUESTIONS BY MR. FARRELL:
18 Q. Do you believe there's a direct
19 correlation between the more pills that get
20 sold and the more pills that get diverted?
21 MS. HENN: Objection to form.
22 THE WITNESS: Can you rephrase
23 that question?
24 QUESTIONS BY MR. FARRELL:
25 Q. Yes.

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1 Is there a relationship between
2 the number of pills that get sold and the
3 number of pills that get diverted?
4 MS. HENN: Objection to form.
5 THE WITNESS: It's hard to say,
6 but you could assume that the -- you
7 know --
8 QUESTIONS BY MR. FARRELL:
9 Q. I don't want you to assume.
10 A. Yeah.
11 Q. I want you to use common sense.
12 A. Yeah. Using common sense and
13 basic logic, you could assume the more pills
14 that are out there, the more potential for
15 diversion there could be.
16 Q. So if I were to tell you that a
17 company sold 100 pills and 10 of them got
18 diverted, and then I come back to you and say
19 a year later, a thousand pills got sold, what
20 does common sense and logic tell you as
21 McKesson Corporation how many pills get
22 diverted?
23 MS. HENN: Objection to form.
24 THE WITNESS: I don't think
25 it's that easy of a connection to say

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1 that happened. There could be many
2 different reasons why a thousand
3 pills -- there may be an increase of a
4 thousand pills with zero diversion.
5 QUESTIONS BY MR. FARRELL:
6 Q. That's true.
7 Do you expect as McKesson
8 Corporation to find in general a direct
9 correlation to volume of pills sold and
10 volume of pills diverted?
11 MS. HENN: Objection to form.
12 Outside the scope.
13 THE WITNESS: Depends. I don't
14 know if there's a statistic on how
15 many pills are diverted. Again,
16 there's reasons why you may have very
17 large volumes of pills for legitimate
18 reasons and there may be zero
19 diversion.
20 QUESTIONS BY MR. FARRELL:
21 Q. That's true. Let me ask it a
22 different way.
23 Do you believe it's foreseeable
24 that the more pills you sell, the more pills
25 get diverted?

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1 MS. HENN: Objection to form.
 2 THE WITNESS: I would say that
 3 there -- that, you know, the volume
 4 of -- the more pills you have, there
 5 could be, could be more to diversion.
 6 It doesn't mean that there is. Or I
 7 would foresee that just an increase in
 8 volume is going to increase diversion.
 9 There could be.
 10 QUESTIONS BY MR. FARRELL:
 11 Q. The more pills that are
 12 diverted -- let me ask you a different way.
 13 A. Okay.
 14 Q. Does McKesson believe that the
 15 more pills that get diverted, the more pills
 16 get abused?
 17 MS. HENN: Objection to form.
 18 Outside the scope.
 19 THE WITNESS: Sorry, could you
 20 rephrase that one again? Let me --
 21 QUESTIONS BY MR. FARRELL:
 22 Q. As McKesson Corporation, do you
 23 acknowledge that the more pills that get
 24 diverted, the more pills get abused?
 25 MS. HENN: Same objections.

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1 THE WITNESS: Again, I'd say
 2 what I said previously: It could --
 3 that could be a possibility. It
 4 depends, but...
 5 QUESTIONS BY MR. FARRELL:
 6 Q. Are people diverting pills to
 7 engage in lawful conduct?
 8 MS. HENN: Objection to form.
 9 THE WITNESS: I don't know why
 10 everybody is diverting pills every
 11 single time, but generally, no.
 12 QUESTIONS BY MR. FARRELL:
 13 Q. Right.
 14 So in general, the more pills
 15 that gets diverted, the more abuse and
 16 addiction we find with prescription opium
 17 pills?
 18 A. There's that possibility.
 19 (McKesson-Hartle Exhibit 27
 20 marked for identification.)
 21 QUESTIONS BY MR. FARRELL:
 22 Q. I'm going to have marked what
 23 is Deposition Exhibit 27. The top right-hand
 24 corner is 2012_5_9.
 25 This is an amicus brief.

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1 Do you know what an amicus
 2 brief is?
 3 A. I do not. I do not have legal
 4 background.
 5 Q. Okay. McKesson Corporation is
 6 a member of the Healthcare Distributors and
 7 Manufacturers Association, now known as the
 8 Healthcare Distributors Association, agreed?
 9 A. Healthcare Distributors
 10 Management Association?
 11 Q. Management, I'm sorry, yes.
 12 A. Yes.
 13 Q. Okay. And on May 9, 2012,
 14 Cardinal Health had gotten itself into a
 15 little trouble with the DEA, hadn't it?
 16 MS. HENN: Objection to form.
 17 THE WITNESS: I'm aware of that
 18 time frame and...
 19 QUESTIONS BY MR. FARRELL:
 20 Q. They got in trouble with the
 21 DEA, very similar to how McKesson got in
 22 trouble with the DEA in 2008, agreed?
 23 MS. HENN: Objection to form.
 24 THE WITNESS: I haven't
 25 reviewed this document or all the

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1 details, but in spirit, in general.
 2 QUESTIONS BY MR. FARRELL:
 3 Q. So in -- on May 9th of 2012,
 4 HDMA, the Healthcare Distribution Management
 5 Association, wrote a brief to a federal court
 6 here in Washington, DC, in support of
 7 Cardinal Health and against the DEA.
 8 Was McKesson Corporation aware
 9 of this amicus brief?
 10 MS. HENN: Objection to form.
 11 Outside the scope.
 12 MR. FARRELL: It's actually
 13 not. It's actually referenced
 14 directly in the notice.
 15 MS. HENN: I'm not sure that's
 16 the case, but we can disagree about
 17 that.
 18 THE WITNESS: I don't know for
 19 100 percent certain, but I assume so.
 20 QUESTIONS BY MR. FARRELL:
 21 Q. Well, I don't want you to
 22 guess. This is relatively important.
 23 Have you seen any
 24 acknowledgement within McKesson Corporation
 25 validating or affirming or reviewing or

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| <p>Page 274</p> <p>1 participating in this amicus brief?</p> <p>2 A. I have not.</p> <p>3 Q. Are you aware of McKesson being</p> <p>4 involved at all in the amicus briefs?</p> <p>5 MS. HENN: Objection to form.</p> <p>6 THE WITNESS: I'm not.</p> <p>7 (McKesson-Hartle Exhibit 28</p> <p>8 marked for identification.)</p> <p>9 QUESTIONS BY MR. FARRELL:</p> <p>10 Q. I'm going to have marked</p> <p>11 Exhibit 28, 2012_05_05.</p> <p>12 Are you aware of the Wayback</p> <p>13 Machine?</p> <p>14 A. Excuse me?</p> <p>15 Q. Are you aware of the Wayback</p> <p>16 Machine?</p> <p>17 A. I am not.</p> <p>18 Q. The Wayback Machine is an</p> <p>19 Internet service that's free, and what it</p> <p>20 does is it's able to go and bring up old</p> <p>21 websites based on dates and time.</p> <p>22 And it just so happens that the</p> <p>23 Wayback Machine captured the HDMA website in</p> <p>24 May of 2012. This comes from the HDMA</p> <p>25 website, and this is a list of the board of</p> | <p>Page 276</p> <p>1 couple of questions about it.</p> <p>2 A. Okay.</p> <p>3 Q. If you flip to page 3...</p> <p>4 A. Of the brief?</p> <p>5 Q. Of the brief.</p> <p>6 The very bottom of the page --</p> <p>7 MS. HENN: Are you talking</p> <p>8 about the Bates numbers or the --</p> <p>9 MR. FARRELL: Yeah, the Bates</p> <p>10 number.</p> <p>11 MS. HENN: Thank you.</p> <p>12 QUESTIONS BY MR. FARRELL:</p> <p>13 Q. It says, "HDMA's members have</p> <p>14 not only statutory and regulatory</p> <p>15 responsibilities to detect and prevent</p> <p>16 diversion of controlled prescription drugs,</p> <p>17 but undertake such efforts as responsible</p> <p>18 members of society."</p> <p>19 Do you see that?</p> <p>20 A. I do.</p> <p>21 Q. Do you recognize this as an</p> <p>22 acknowledgement that all of the distributors</p> <p>23 in the country have a common law duty to the</p> <p>24 people of the United States of America to</p> <p>25 prevent diversion of controlled substances</p> |
| <p>Page 275</p> <p>1 directors.</p> <p>2 Now, what's an executive</p> <p>3 committee on a board of directors?</p> <p>4 MS. HENN: Objection to form.</p> <p>5 Outside the scope.</p> <p>6 THE WITNESS: That's the senior</p> <p>7 leaders driving this group.</p> <p>8 QUESTIONS BY MR. FARRELL:</p> <p>9 Q. And, Mr. McKesson Corporation,</p> <p>10 you were on the executive committee of HDMA</p> <p>11 of 2012, were you not?</p> <p>12 MS. HENN: Objection to form.</p> <p>13 Outside the scope.</p> <p>14 THE WITNESS: One of our senior</p> <p>15 leaders is.</p> <p>16 QUESTIONS BY MR. FARRELL:</p> <p>17 Q. You're in the senior leadership</p> <p>18 of HDMA, and you signed off on an amicus</p> <p>19 brief submitted to a federal court in</p> <p>20 Washington, DC, in support of one of your</p> <p>21 colleagues and members, Cardinal Health.</p> <p>22 MS. HENN: Objection to form.</p> <p>23 Outside the scope.</p> <p>24 QUESTIONS BY MR. FARRELL:</p> <p>25 Q. So I'm going to ask you a</p> | <p>Page 277</p> <p>1 because you're selling controlled substances?</p> <p>2 MR. SUDDATH: Objection.</p> <p>3 MS. HENN: Objection to form.</p> <p>4 Outside the scope.</p> <p>5 THE WITNESS: Okay. Could you</p> <p>6 ask me that again?</p> <p>7 QUESTIONS BY MR. FARRELL:</p> <p>8 Q. Do you recognize this as an</p> <p>9 acknowledgement that all of the distributors</p> <p>10 in the country have a common law duty to the</p> <p>11 American citizens to prevent controlled</p> <p>12 substances from being diverted into the</p> <p>13 illicit market?</p> <p>14 MR. SUDDATH: Objection.</p> <p>15 MS. HENN: Objection to form.</p> <p>16 Outside the scope.</p> <p>17 QUESTIONS BY MR. FARRELL:</p> <p>18 Q. I mean, isn't this what we</p> <p>19 talked about earlier?</p> <p>20 A. I do.</p> <p>21 Q. You do, don't you? Yes?</p> <p>22 A. Yes.</p> <p>23 Q. Because it's not just</p> <p>24 statutory, regulatory. You're engaged in</p> <p>25 selling opium pills. You owe a duty to the</p> |

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| <p style="text-align: right;">Page 278</p> <p>1 American people to do your very best to 2 prevent diversion. 3 MS. HENN: Objection to form. 4 Outside the scope. 5 QUESTIONS BY MR. FARRELL: 6 Q. Agreed? 7 A. Agreed. 8 Q. And this is your trade 9 organization making the same representation 10 to a federal court in Washington, DC? 11 MS. HENN: Same objections. 12 Objection to form. Outside the scope. 13 THE WITNESS: Yes. 14 QUESTIONS BY MR. FARRELL: 15 Q. Next sentence: "The public 16 health dangers associated with the diversion 17 and abuse of controlled prescription drugs 18 have been well-recognized over the years by 19 Congress, DEA, HDMA and its members, and 20 public health authorities." 21 Is that all true? 22 MS. HENN: Objection to form. 23 Outside the scope. 24 THE WITNESS: Yes. 25</p> | <p style="text-align: right;">Page 280</p> <p>1 THE WITNESS: Oh, excuse me. 2 I also remember saying that 3 certain parts of those regulations 4 related to what a suspicious order is 5 is not clear. 6 QUESTIONS BY MR. FARRELL: 7 Q. Page 7. "The societal costs of 8 prescription drug abuse are" -- what's it 9 say? 10 A. I flipped to the wrong page. 11 Excuse me. 12 "Huge." 13 Q. And if a distributor engages in 14 unlawful conduct, should the distributor be 15 held accountable for such societal costs? 16 MS. HENN: Objection to form. 17 Outside the scope. 18 THE WITNESS: Can you repeat 19 that, please? 20 QUESTIONS BY MR. FARRELL: 21 Q. If a wholesale distributor 22 engages in unlawful conduct, should it be 23 held accountable for the societal costs of 24 prescription drug abuse? 25 MR. SUDDATH: Objection.</p> |
| <p style="text-align: right;">Page 279</p> <p>1 QUESTIONS BY MR. FARRELL: 2 Q. The next sentence. This is the 3 part that I'd like to talk to you about, the 4 highlighted part. "The agency," meaning DEA, 5 "has failed to provide meaningful guidance to 6 assist the regulated industry in complying 7 with the DEA's interpretation of its 8 implementing regulations. HDMA respectfully 9 submits that despite the agency's oft-recited 10 refrain that the regulations are clear, the 11 regulated industry does not know the rules of 12 the road because DEA has not adequately 13 explained them." 14 McKesson has said the opposite 15 publicly and to its own people, agreed? 16 MS. HENN: Object to form. 17 QUESTIONS BY MR. FARRELL: 18 Q. Remember the slide that said 19 clear? Remember your testimony about the 20 letters and the settlement agreement? You 21 said a few minutes ago it was clear. 22 A. I do remember all of that. I 23 also -- 24 MS. HENN: Object to form. 25 Go ahead.</p> | <p style="text-align: right;">Page 281</p> <p>1 MS. HENN: Same objections. 2 THE WITNESS: I believe 3 distributors have a responsibility in 4 preventing diversion. 5 QUESTIONS BY MR. FARRELL: 6 Q. So should they be held 7 accountable for the societal costs that are 8 documented in this pleading and referenced as 9 huge? 10 A. I think it depends. 11 MS. HENN: Objection to form. 12 QUESTIONS BY MR. FARRELL: 13 Q. Depends on what? 14 MS. HENN: Same objection. 15 Go ahead. 16 THE WITNESS: It depends on the 17 facts and circumstances and, you know, 18 the information about the specific 19 situation. 20 QUESTIONS BY MR. FARRELL: 21 Q. If a distributor repeatedly 22 fails to report suspicious orders, do you 23 believe it should be held accountable for the 24 societal costs of prescription drug abuse? 25 MR. SUDDATH: Objection.</p> |

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1 MS. HENN: Objection to form.
 2 THE WITNESS: And I believe it
 3 depends.
 4 QUESTIONS BY MR. FARRELL:
 5 Q. On?
 6 A. The facts and circumstances.
 7 Q. How about the facts and
 8 circumstances which led to McKesson paying
 9 \$150 million fine?
 10 MS. HENN: Objection to form.
 11 THE WITNESS: Again, I think it
 12 depends.
 13 QUESTIONS BY MR. FARRELL:
 14 Q. Do you think McKesson is partly
 15 responsible for the societal costs of
 16 prescription drug abuse in America?
 17 MS. HENN: Objection to form.
 18 THE WITNESS: Could you ask
 19 that one again, please?
 20 QUESTIONS BY MR. FARRELL:
 21 Q. Do you think McKesson is partly
 22 responsible for the societal costs of
 23 prescription drug abuse in America?
 24 MS. HENN: Objection to form.
 25 THE WITNESS: Again, there's a

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1 lot of people involved in -- it's a
 2 very complicated and multi-faceted
 3 issue, so...
 4 QUESTIONS BY MR. FARRELL:
 5 Q. We'll get to the other people
 6 in a second.
 7 MS. HENN: Are you done with
 8 your answer?
 9 THE WITNESS: I am done.
 10 MS. HENN: Okay.
 11 QUESTIONS BY MR. FARRELL:
 12 Q. We'll get to the others in a
 13 second. I want to talk about McKesson first.
 14 This is your opportunity to
 15 accept partial responsibility for the
 16 societal costs of prescription drug abuse in
 17 America; yes or no?
 18 MS. HENN: Objection to form.
 19 Also outside the scope.
 20 THE WITNESS: So again, it
 21 depends on -- it depends.
 22 QUESTIONS BY MR. FARRELL:
 23 Q. You're McKesson Corporation.
 24 A. Right.
 25 Q. You're sitting here today. You

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1 have the opportunity to look in the camera
 2 and tell the jury whether or not you accept
 3 partial responsibility for the societal costs
 4 of prescription drug abuse in America.
 5 MS. HENN: Objection to form.
 6 Outside the scope.
 7 QUESTIONS BY MR. FARRELL:
 8 Q. I'd ask you to answer yes or
 9 no.
 10 MS. HENN: Same objections.
 11 THE WITNESS: I'm not sure how
 12 to answer that -- that question
 13 specifically.
 14 QUESTIONS BY MR. FARRELL:
 15 Q. Well, you can say yes or --
 16 A. I understand that.
 17 Q. -- you can say no.
 18 A. I understand that.
 19 MS. HENN: Objection to form.
 20 QUESTIONS BY MR. FARRELL:
 21 Q. If I asked you the same
 22 question in your personal capacity, would
 23 that help you answer the question better?
 24 MS. HENN: Same objection.
 25 Objection to form.

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1 THE WITNESS: Again, it
 2 depends -- I would say it doesn't
 3 change my answer. It depends on the
 4 role that they played.
 5 QUESTIONS BY MR. FARRELL:
 6 Q. Well, back to McKesson
 7 Corporation, which is you sitting in the
 8 chair today. Knowing what you know as the
 9 30(b)(6) representative, the corporate
 10 designee, knowing about your past conduct,
 11 knowing about the past interactions with the
 12 DEA, I'm going to ask you again: Does
 13 McKesson Corporation accept partial
 14 responsibility for the societal costs of
 15 prescription drug abuse in America?
 16 MS. HENN: Objection to form.
 17 THE WITNESS: Again, you know,
 18 I -- we're part of the closed system,
 19 so we're responsible for preventing
 20 diversion.
 21 QUESTIONS BY MR. FARRELL:
 22 Q. So the answer is?
 23 MS. HENN: Objection to form.
 24 THE WITNESS: Again, I think
 25 we're responsible for something. I

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| <p style="text-align: right;">Page 286</p> <p>1 don't know what -- how you define all 2 societal costs and -- I still believe 3 it depends on different circumstances. 4 QUESTIONS BY MR. FARRELL: 5 Q. Sir, we're not going to parse 6 out percentages. 7 A. Yeah. 8 Q. Let's just talk globally for 9 McKesson Corporation. So I don't want to put 10 words in your mouth because it's got to come 11 out of your mouth. So the answer is yes or 12 no. 13 MS. HENN: Objection to form. 14 THE WITNESS: I would say yes, 15 partially. 16 QUESTIONS BY MR. FARRELL: 17 Q. How about Purdue Pharma? Does 18 McKesson Corporation take the position that 19 Purdue Pharma is partially responsible for 20 the societal costs of prescription drug abuse 21 in America? 22 MS. HENN: Objection to form. 23 Outside the scope. 24 THE WITNESS: I'm not going to 25 answer for other companies. I'm --</p> | <p style="text-align: right;">Page 288</p> <p>1 A. I have not. 2 Q. Do you know who Gary Boggs is? 3 A. I do know Gary. 4 Q. I'll represent to you that on 5 the metadata that was provided by the -- 6 McKesson, indicates that this presentation is 7 dated in late 2012 -- wait, late 2013, I 8 think, probably before Gary Boggs came on to 9 McKesson. We'll ask him when we depose him. 10 But anyway, this is a McKesson 11 spreadsheet from Gary Boggs. Gary Boggs is 12 former DEA. 13 A. PowerPoint, not spreadsheet. 14 Q. Yeah, I'm sorry. 15 A. Okay. 16 Q. He's former DEA, correct? 17 A. Correct. 18 Q. He was the number 2 man on Joe 19 Rannazzisi, yes? 20 A. Yes. 21 Q. And as we'll see later, he was 22 actually in the room for one of the 23 presentations when DEA was negotiating with 24 McKesson on the 2008 settlement. 25 Is that your memory as a</p> |
| <p style="text-align: right;">Page 287</p> <p>1 it's like I answered my question: 2 Those involved in this space, 3 depending on the facts and 4 circumstances, may be. So, yes. 5 QUESTIONS BY MR. FARRELL: 6 Q. Flip to page 8, the last 7 paragraph. Your trade organization is saying 8 that the "DEA's goal, the prevention of 9 diversion of controlled prescription drugs, 10 is, of course, a public good." 11 Does McKesson validate, 12 acknowledge and affirm that statement? 13 MS. HENN: Objection to form. 14 THE WITNESS: Absolutely. The 15 prevention of the diversion of 16 controlled substances is good for the 17 public. 18 (McKesson-Hartle Exhibit 29 19 marked for identification.) 20 QUESTIONS BY MR. FARRELL: 21 Q. Next exhibit I'm going to have 22 marked is Exhibit 29. It's Exhibit 23 2013_09_13. It's Bates stamp 24 MCK-AGMS-006000880. 25 Have you seen this document?</p> | <p style="text-align: right;">Page 289</p> <p>1 corporate entity? 2 MS. HENN: Objection to form. 3 THE WITNESS: I wasn't aware 4 that he was specifically in the room, 5 but... 6 QUESTIONS BY MR. FARRELL: 7 Q. The title of this PowerPoint 8 slide is what? 9 A. Oh, "State of prescription drug 10 abuse." 11 Q. And on the second page, talks 12 about the impact of effective compliance. 13 And it uses lots of America-related stuff, 14 eagles and flags and such. 15 Do you see that? 16 A. I do see that. 17 Q. "Protecting America from 18 Prescription Drug Diversion." 19 The next page is a history of 20 understanding the problem, and on page 4 it 21 talks about a collision course. 22 And presumably this is two 23 planes colliding in the air, and that's 24 OxyContin and Percocet. 25 Do you see that?</p> |

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1 MS. HENN: Objection to form.
 2 THE WITNESS: I see that.
 3 QUESTIONS BY MR. FARRELL:
 4 Q. "In the late 1990s, doctors
 5 aggressively prescribing painkillers - a
 6 radical change in health care behavior."
 7 And that radical change in
 8 health care behavior did what to the number
 9 of prescriptions?
 10 MS. HENN: Objection to form.
 11 THE WITNESS: Increased them.
 12 QUESTIONS BY MR. FARRELL:
 13 Q. Which resulted in an increase
 14 or decrease in the number of pills McKesson
 15 sold?
 16 A. I don't know exact numbers, but
 17 it increased.
 18 Q. And then the last part,
 19 "Manufacturers fueled the use of prescription
 20 painkillers."
 21 This is coming from your new
 22 head of regulatory affairs at McKesson,
 23 agreed?
 24 MS. HENN: Objection to form.
 25 THE WITNESS: Can you say that

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1 again?
 2 QUESTIONS BY MR. FARRELL:
 3 Q. Yeah.
 4 A. He's not -- he wasn't the head
 5 of regulatory affairs.
 6 Q. Then, but he is now?
 7 A. He's one of the leaders on the
 8 regulatory affairs team.
 9 Q. Okay. And this is his
 10 statement that "Manufacturers fueled the use
 11 of prescription painkillers."
 12 Is that McKesson's position?
 13 MS. HENN: Objection to form.
 14 THE WITNESS: I don't know if
 15 that's his own specific words or he
 16 got that from a previous deck from
 17 DEA. I'm not sure.
 18 QUESTIONS BY MR. FARRELL:
 19 Q. We'll have to ask him.
 20 But I'm asking McKesson whether
 21 or not it shares this view.
 22 MS. HENN: Objection to form.
 23 Outside the scope.
 24 THE WITNESS: Manufacturers are
 25 part of the closed system, like -- and

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1 played a role.
 2 QUESTIONS BY MR. FARRELL:
 3 Q. Does McKesson believe the
 4 manufacturers fueled the use of prescription
 5 painkillers?
 6 MS. HENN: Objection to form.
 7 Outside the scope.
 8 THE WITNESS: I think they
 9 played a role. I think there's many
 10 reasons -- many things that fueled the
 11 epidemic.
 12 QUESTIONS BY MR. FARRELL:
 13 Q. So would you rather just punt
 14 on the question?
 15 MS. HENN: Objection to form.
 16 THE WITNESS: That's what I'm
 17 going to share. That's my answer.
 18 QUESTIONS BY MR. FARRELL:
 19 Q. So yes or no, does McKesson
 20 Corporation believe manufacturers fueled the
 21 use of prescription painkillers?
 22 MS. HENN: Objection to form.
 23 Outside the scope.
 24 THE WITNESS: Like I said,
 25 my -- they're part of the system.

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1 They played a role.
 2 QUESTIONS BY MR. FARRELL:
 3 Q. So the answer is?
 4 A. They played a role. I wouldn't
 5 say -- I wouldn't characterize it as fueled.
 6 I don't know that I would use that language.
 7 Q. Fair enough.
 8 The next page, 5 and 6,
 9 document Purdue Pharma's \$635 million fine,
 10 Cephalon's \$425 million fine.
 11 Going to page 7, it's comparing
 12 the US rates of opioid overdose deaths, sales
 13 and treatment admissions.
 14 Do you see that?
 15 A. I see that.
 16 Q. What is the correlation between
 17 opioid sales and opioid deaths? Are they
 18 related or unrelated?
 19 MS. HENN: Objection to form.
 20 THE WITNESS: They're both
 21 increasing at a similar rate.
 22 QUESTIONS BY MR. FARRELL:
 23 Q. So that means they're related
 24 or unrelated?
 25 MS. HENN: Objection to form.

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1 THE WITNESS: They appear to be
2 related.
3 QUESTIONS BY MR. FARRELL:
4 Q. Does McKesson believe that
5 opioid sales are related to opioid deaths?
6 MS. HENN: Objection to form.
7 Outside the scope.
8 THE WITNESS: Can you ask that
9 one more time, please?
10 QUESTIONS BY MR. FARRELL:
11 Q. Does McKesson believe that
12 opioid sales are related to opioid deaths?
13 MS. HENN: Objection to form.
14 Outside the scope.
15 THE WITNESS: The volume of
16 opioids in the market and diversion is
17 related to opioid deaths, certainly.
18 QUESTIONS BY MR. FARRELL:
19 Q. Page 8, the Controlled
20 Substances Act, the very last provision says,
21 "Creates checks and balances between
22 registrants to protect the public health and
23 safety."
24 Again, this is again a
25 reaffirmation from Gary Boggs, who is now one

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1 of your senior regulatory affairs management,
2 acknowledging that the registrants and the
3 DEA have a duty to protect the public health
4 and safety, agreed?
5 A. Agreed.
6 Q. Page 13. It says, "What can
7 happen when these checks and balances
8 collapse?"
9 What do you believe this is a
10 picture of?
11 MS. HENN: Objection to form.
12 THE WITNESS: It's a building
13 falling down.
14 QUESTIONS BY MR. FARRELL:
15 Q. A disaster?
16 A. It's a building that's falling
17 down. Why it fell down could be a disaster.
18 Q. What do you infer from
19 Mr. Boggs' implication?
20 A. That things can go wrong,
21 something can happen.
22 Q. Page 16, pictures of pain
23 clinics and people waiting in line to
24 purchase pills sold by McKesson to
25 pharmacies.

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1 MS. HENN: Objection to form.
2 MR. FARRELL: You're right.
3 That's not necessarily a picture of
4 McKesson.
5 QUESTIONS BY MR. FARRELL:
6 Q. You would agree with me that if
7 a McKesson sales agent came upon a pain
8 clinic and saw this, that would be a red
9 flag?
10 MS. HENN: Objection to form.
11 THE WITNESS: It would.
12 QUESTIONS BY MR. FARRELL:
13 Q. Page 17, historical comparison.
14 He's comparing the opioid crisis to the BP
15 oil spill where 11 people were killed and BP
16 paid 40 billion, plus 16 billion to the Clean
17 Water Act.
18 Have more or less than 11
19 people been killed by the opioid crisis?
20 A. Clearly more.
21 Q. Have more people died today
22 than 11 people?
23 MS. HENN: Objection to form.
24 THE WITNESS: Based on the
25 statistics, yes.

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1 QUESTIONS BY MR. FARRELL:
2 Q. Page 24. Does McKesson
3 acknowledge and agree there is a national
4 epidemic of prescription pill addiction,
5 abuse, morbidity and mortality?
6 MS. HENN: Objection to form.
7 THE WITNESS: Absolutely.
8 QUESTIONS BY MR. FARRELL:
9 Q. Does McKesson acknowledge the
10 economic impact of this national epidemic in
11 America is greater than \$57 billion per year?
12 MS. HENN: Objection to form.
13 Outside the scope.
14 THE WITNESS: I don't know
15 where that -- the -- how the 57
16 billion was derived, but there's
17 clearly an -- or an economic impact to
18 the country.
19 QUESTIONS BY MR. FARRELL:
20 Q. Page 37, "distributors have
21 great power." The last provision.
22 You, McKesson Corporation,
23 control the supply to downstream customers.
24 Does McKesson acknowledge that duty?
25 MS. HENN: Objection to form.

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| <p style="text-align: right;">Page 298</p> <p>1 THE WITNESS: We control what</p> <p>2 we sell.</p> <p>3 QUESTIONS BY MR. FARRELL:</p> <p>4 Q. So yes?</p> <p>5 A. Yes.</p> <p>6 Q. Page 38. And Mr. -- I take</p> <p>7 exception with Mr. Boggs here. He attributes</p> <p>8 this to some guy named Voltaire, but actually</p> <p>9 this is Spiderman. "With great power comes</p> <p>10 great responsibility."</p> <p>11 Does McKesson acknowledge that?</p> <p>12 You don't have to answer that</p> <p>13 question.</p> <p>14 Page 41, "Detecting Suspicious</p> <p>15 Orders." Most importantly, Mr. Boggs is</p> <p>16 telling McKesson that you cannot ignore what.</p> <p>17 A. Warning signs.</p> <p>18 Q. Page 46, "Without sustained</p> <p>19 sources of supply, major diversion schemes</p> <p>20 wither away."</p> <p>21 Who are the major sources of</p> <p>22 supply?</p> <p>23 MS. HENN: Objection to form.</p> <p>24 THE WITNESS: Those in the</p> <p>25 closed system of distribution:</p> | <p style="text-align: right;">Page 300</p> <p>1 MS. HENN: Objection to form.</p> <p>2 THE WITNESS: There's</p> <p>3 allegations.</p> <p>4 QUESTIONS BY MR. FARRELL:</p> <p>5 Q. Same ones as before, agreed?</p> <p>6 MS. HENN: Objection to form.</p> <p>7 THE WITNESS: Related to the</p> <p>8 regulations.</p> <p>9 QUESTIONS BY MR. FARRELL:</p> <p>10 Q. Same as the 2008?</p> <p>11 MS. HENN: Objection to form.</p> <p>12 THE WITNESS: Around suspicious</p> <p>13 orders.</p> <p>14 (McKesson-Hartle Exhibit 31</p> <p>15 marked for identification.)</p> <p>16 QUESTIONS BY MR. FARRELL:</p> <p>17 Q. Exhibit 31, dated November 6,</p> <p>18 2013. It's 2013_11_6, MCKMDL00409048.</p> <p>19 It's again from the United</p> <p>20 States Attorney in the Northern District of</p> <p>21 West Virginia. It's talking about further</p> <p>22 explanations.</p> <p>23 You would agree with me this is</p> <p>24 the same conduct that McKesson got in trouble</p> <p>25 for in 2008?</p> |
| <p style="text-align: right;">Page 299</p> <p>1 manufacturers, distributors. There's</p> <p>2 also sources, illicit sources, outside</p> <p>3 of the closed network.</p> <p>4 QUESTIONS BY MR. FARRELL:</p> <p>5 Q. They all originate within the</p> <p>6 closed network, do they not?</p> <p>7 MS. HENN: Objection to form.</p> <p>8 THE WITNESS: What do you mean</p> <p>9 by "all originate"?</p> <p>10 QUESTIONS BY MR. FARRELL:</p> <p>11 Q. Well, Bob, in his trailer in</p> <p>12 southern West Virginia, isn't making</p> <p>13 OxyContin pills.</p> <p>14 A. No, I'm saying there's other --</p> <p>15 I understand your point. They come</p> <p>16 ultimately from the manufacturer,</p> <p>17 distributor, pharmacy.</p> <p>18 (McKesson-Hartle Exhibit 30</p> <p>19 marked for identification.)</p> <p>20 QUESTIONS BY MR. FARRELL:</p> <p>21 Q. Exhibit 30, 2013_10_23, Bates</p> <p>22 stamp MCKMDL00409046. This is October 23,</p> <p>23 2013.</p> <p>24 McKesson is in trouble again</p> <p>25 with the DEA, agreed?</p> | <p style="text-align: right;">Page 301</p> <p>1 MS. HENN: Objection to form.</p> <p>2 THE WITNESS: Yeah, it has to</p> <p>3 do with suspicious orders, which is</p> <p>4 similar.</p> <p>5 QUESTIONS BY MR. FARRELL:</p> <p>6 Q. And it's Covington & Burlington</p> <p>7 at a place called 1201 Pennsylvania Avenue,</p> <p>8 Northwest.</p> <p>9 Do you know where that is?</p> <p>10 Isn't that here?</p> <p>11 MS. HENN: Old office.</p> <p>12 MR. FARRELL: The old office.</p> <p>13 All right.</p> <p>14 THE WITNESS: In town.</p> <p>15 QUESTIONS BY MR. FARRELL:</p> <p>16 Q. But again, this is the same</p> <p>17 thing.</p> <p>18 Do you know Bill Ihlenfeld?</p> <p>19 A. I do not.</p> <p>20 Q. Yeah, he was the US Attorney</p> <p>21 for the Northern District of West Virginia</p> <p>22 and a classmate of mine. He's calling on</p> <p>23 McKesson, and he's essentially telling</p> <p>24 McKesson, "Hey, you're not doing your job</p> <p>25 again."</p> |

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1 MS. HENN: Objection to form.
 2 QUESTIONS BY MR. FARRELL:
 3 Q. "And you're dumping pills into
 4 my state."
 5 MS. HENN: Same objection.
 6 (McKesson-Hartle Exhibit 32
 7 marked for identification.)
 8 QUESTIONS BY MR. FARRELL:
 9 Q. Exhibit 32, 2014_1_XX,
 10 MCKMDL00409050. In fact, they put a whole
 11 presentation together.
 12 Have you seen this
 13 presentation?
 14 A. I have seen this one.
 15 Q. I'm not going to go through
 16 this because we'll go through with it a lot
 17 more tomorrow.
 18 In essence, what I'm trying to
 19 accomplish here is that you understand that
 20 the United States District Attorney for the
 21 Northern District of Ohio, and then it turns
 22 out other ones, including Colorado, are
 23 basically telling McKesson: You have a
 24 systemic failure to monitor, detect and
 25 report suspicious orders.

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1 Is that what they're alleging?
 2 MS. HENN: Objection to form.
 3 THE WITNESS: Yes, that's what
 4 they're alleging.
 5 (McKesson-Hartle Exhibit 33
 6 marked for identification.)
 7 QUESTIONS BY MR. FARRELL:
 8 Q. Exhibit 33, this is your
 9 response, 2014_03_12, Bates-stamped
 10 MCKMDL00409116.
 11 This is you responding, saying,
 12 "Nuh-uh, no, we didn't."
 13 Does that about wrap it up?
 14 MS. HENN: Objection to form.
 15 QUESTIONS BY MR. FARRELL:
 16 Q. You've seen this document
 17 before?
 18 A. I have not, so I'm going to go
 19 through it.
 20 Q. Okay. My summary of this is
 21 that McKesson's response is, "We don't have
 22 to report all suspicious orders. We only
 23 have to report suspicious customers."
 24 Does that sound familiar?
 25 MS. HENN: Objection to form.

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1 THE WITNESS: I haven't
 2 finished reading this, but I know
 3 there was discussions with DEA about
 4 both.
 5 QUESTIONS BY MR. FARRELL:
 6 Q. We agree that you saw from
 7 Section 55 on McKesson has said, "If you
 8 ain't going to turn in suspicious orders, you
 9 need to have it in writing."
 10 Neither you nor Mr. Boggs has
 11 ever been able to find such a piece of
 12 writing.
 13 MS. HENN: Objection to form.
 14 (McKesson-Hartle Exhibit 34
 15 marked for identification.)
 16 QUESTIONS BY MR. FARRELL:
 17 Q. In fact, Exhibit 34 is the
 18 response to the presentation, March 20, 2014.
 19 It's 2014_03_20, MCKMDL00409174, from my good
 20 friend Bill Ihlenfeld's office, which
 21 basically says "bull."
 22 MS. HENN: Counsel, just to
 23 clarify, I think Exhibit 33 you
 24 might -- you have two documents in
 25 here.

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1 MR. FARRELL: Maybe. It may
 2 have included it.
 3 MS. HENN: Ah, is that why?
 4 MR. FARRELL: Maybe.
 5 MS. HENN: Okay. That's fine.
 6 Just wanted to make sure you knew.
 7 QUESTIONS BY MR. FARRELL:
 8 Q. And at this point in time, it
 9 appears that McKesson had hired AGI --
 10 A. Can I read this one? I have
 11 not read this one before.
 12 Q. Okay. I'm not going to drill
 13 you on that letter. It's got --
 14 A. No, I'm about done. I just
 15 wanted to read the summary here, too.
 16 Okay. Thank you.
 17 Q. Now, skipping through all of
 18 the other correspondence because we'll get
 19 into that more tomorrow, more recently, as a
 20 result of all of this, even though McKesson
 21 is denying liability, you understand that
 22 McKesson did enter into another settlement
 23 agreement?
 24 A. I understand that.
 25 (McKesson-Hartle Exhibits 35,

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1 36 and 37 marked for identification.)
2 QUESTIONS BY MR. FARRELL:
3 Q. 2017_01_05A, 35, Exhibit 35,
4 MCKMDL00355322, the settlement agreement and
5 release.
6 Exhibit 37, 2017_01_5B,
7 MCKMDL00355477.
8 MS. HENN: Did you skip 36?
9 QUESTIONS BY MR. FARRELL:
10 Q. I didn't.
11 36 will be 2017_01_05B, the
12 compliance addendum.
13 MS. HENN: 37.
14 MR. FARRELL: Oh, okay, I'm
15 sorry. But it's okay because we'll
16 just put 36 as the administrative
17 memorandum, which is 2017_01_5C,
18 MCKMDL0355513.
19 MS. HENN: And, Counsel, we've
20 been going about an hour, so if we
21 could have a break at a good stopping
22 point. It doesn't have to be this
23 second, but if there's one very soon,
24 that would be great.
25 MR. FARRELL: Yeah, very soon.

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1 MS. HENN: Great.
2 QUESTIONS BY MR. FARRELL:
3 Q. Just to acknowledge, McKesson's
4 still is denying liability, and this time the
5 cost has become more prohibitive with the
6 fine, 150 million.
7 MS. HENN: Objection to form.
8 QUESTIONS BY MR. FARRELL:
9 Q. Agreed?
10 A. Agreed. We settled with the
11 settlement agreement, agreed.
12 Q. McKesson's distribution
13 facilities were systematically failing to
14 report suspicious orders and resulted in a
15 \$150 million fine assessed by the DEA and
16 paid by McKesson Corporation; true or not
17 true?
18 MS. HENN: Objection to form.
19 THE WITNESS: We did pay that
20 fine, \$150 million.
21 QUESTIONS BY MR. FARRELL:
22 Q. Because you were systematically
23 not reporting suspicious orders?
24 MS. HENN: Same objection.
25 THE WITNESS: That was at the

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1 core of it.
2 QUESTIONS BY MR. FARRELL:
3 Q. So let's just be fair. There
4 were certain distribution facilities that
5 utterly failed to fulfill their obligations
6 under federal law to monitor, detect, halt
7 and report suspicious orders, which resulted
8 in McKesson paying the largest fine in the
9 history of the DEA; true or not true?
10 MS. HENN: Objection to form.
11 THE WITNESS: Could you
12 simplify that question a little bit?
13 QUESTIONS BY MR. FARRELL:
14 Q. Yeah.
15 McKesson wasn't following the
16 law and got fined \$150 million?
17 MS. HENN: Objection to form.
18 THE WITNESS: We acknowledged
19 that certain orders did not get
20 flagged in our system.
21 QUESTIONS BY MR. FARRELL:
22 Q. Thousands.
23 MS. HENN: Objection to form.
24 QUESTIONS BY MR. FARRELL:
25 Q. Thousands of orders?

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1 A. Orders.
2 Q. Like some facilities reported
3 none.
4 MS. HENN: Objection to form.
5 QUESTIONS BY MR. FARRELL:
6 Q. Yes?
7 A. Systematically none.
8 Q. Systematically none.
9 And it wasn't just an isolated
10 distribution facility. It was several
11 different facilities across the spectrum at
12 McKesson had utterly failed to comply with
13 federal regulations to prevent diversion of
14 controlled substances?
15 MS. HENN: Objection to form.
16 THE WITNESS: We believed we
17 were in good faith working with DEA as
18 part of the 2008 agreement to report
19 customers and report orders in a
20 different way that was mutually agreed
21 upon. So --
22 QUESTIONS BY MR. FARRELL:
23 Q. Yeah, I'm not asking --
24 A. -- I would say --
25 MR. FARRELL: You're right.

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1 You're right.
 2 THE WITNESS: I know you say
 3 zero, but I -- you know, there are
 4 situations and scenarios where we
 5 reported based on what we agreed to
 6 with the DEA, based on that settlement
 7 agreement.
 8 So I understand systematically
 9 they weren't being reported, but they
 10 were being reported in other ways.
 11 QUESTIONS BY MR. FARRELL:
 12 Q. Sitting here today does
 13 McKesson Corporation acknowledge that it
 14 utterly failed in its obligations to prevent
 15 diversion of opium pills into the American
 16 illicit market?
 17 MS. HENN: Objection to form.
 18 THE WITNESS: No, I don't
 19 believe we utterly failed. We, again,
 20 in good faith over the years have
 21 worked with DEA, taken guidance,
 22 developed programs, enhanced programs,
 23 evolved them over the course of time.
 24 So I wouldn't characterize it
 25 as utterly failing.

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1 QUESTIONS BY MR. FARRELL:
 2 Q. Well, when you report zero
 3 suspicious orders over years at the same time
 4 selling tens of millions of opium pills into
 5 a community, you're not meeting your
 6 obligations under federal law, agreed?
 7 MS. HENN: Objection to form.
 8 THE WITNESS: Again, there's
 9 certain times in which we acknowledged
 10 that we did not report orders. That
 11 does not mean that we did not conduct
 12 diligence, that we did not evolve our
 13 program to help prevent.
 14 QUESTIONS BY MR. FARRELL:
 15 Q. And I understand the desire to
 16 want to say in good faith you did your best.
 17 What I'm asking for is a very simple
 18 acknowledgement that McKesson was not
 19 following the law and got fined for it on two
 20 occasions.
 21 MS. HENN: Objection to form.
 22 THE WITNESS: Those were the
 23 allegations.
 24 QUESTIONS BY MR. FARRELL:
 25 Q. Do you accept those allegations

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1 as partially true?
 2 MS. HENN: Objection to form.
 3 THE WITNESS: Again, we --
 4 partially, in the second agreement, we
 5 did acknowledge that, you know, we
 6 didn't identify all the suspicious
 7 orders that we could have.
 8 QUESTIONS BY MR. FARRELL:
 9 Q. In fact, in some distribution
 10 facilities you didn't identify any?
 11 MS. HENN: Objection to form.
 12 QUESTIONS BY MR. FARRELL:
 13 Q. This isn't like we missed a
 14 needle in a haystack. This is we missed the
 15 hay.
 16 MS. HENN: Objection to form.
 17 THE WITNESS: So the thing I
 18 would just share is that, again, all
 19 of those orders were blocked and not
 20 shipped. And we may not have
 21 systematically, as I mentioned
 22 earlier, reported, but --
 23 MR. FARRELL: Hold on.
 24 MS. HENN: Wait, he's not done
 25 with his answer.

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1 THE WITNESS: I'm just
 2 reiterating the point I made earlier
 3 about the 2008 agreement, mutually
 4 discussing with DEA the fact that we
 5 were focusing on customers and would
 6 report suspicious orders in a mutually
 7 format -- a mutually-agreed-upon
 8 format.
 9 So you say zero, but it may not
 10 always be zero.
 11 QUESTIONS BY MR. FARRELL:
 12 Q. Just to be fair with you, we're
 13 going to take a break.
 14 A. All right.
 15 Q. I have the transactional data
 16 in Cuyahoga and Summit County from McKesson
 17 sales of opium pills. I also have the
 18 suspicious order reports.
 19 So let's be clear: McKesson
 20 didn't get in trouble for blocking orders and
 21 not reporting them. McKesson paid a record
 22 fine for shipping suspicious orders and not
 23 reporting them.
 24 MS. HENN: Objection to form.
 25 THE WITNESS: Say that again.

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1 I want to be very clear what I heard.
 2 QUESTIONS BY MR. FARRELL:
 3 Q. Me, too.
 4 A. Yeah.
 5 Q. You're telling me that
 6 McKesson's conduct that it admitted to,
 7 McKesson's position is that it blocked
 8 suspicious orders and then just simply didn't
 9 report them in the right way. That's your
 10 position?

11 A. We systematically -- based on
 12 the design of our system, orders were
 13 blocked.

14 Q. You believe that McKesson was
 15 blocking all the suspicious orders and paid
 16 \$150 million because of the manner in which
 17 it reported?

18 A. Earlier I said we did
 19 acknowledge that some orders, not all, we
 20 didn't block.

21 Q. Okay. So let's get back --

22 A. We didn't -- let me rephrase
 23 that. We acknowledge that our system may not
 24 have detected orders that could be deemed as
 25 suspicious.

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1 Q. And that the orders that your
 2 system did detect as suspicious, you still
 3 shipped anyway without reporting them?

4 MS. HENN: Objection to form.

5 THE WITNESS: No.

6 QUESTIONS BY MR. FARRELL:

7 Q. You believe that's not true?

8 A. Based on my understanding of
 9 our systems and how things work in -- when
 10 they hit a threshold and they're blocked,
 11 those do not get shipped.

12 Q. All right. So fair --

13 A. That's how we define those
 14 suspicious orders.

15 Q. Fair enough.

16 Let me ask you this: If your
 17 system detects a suspicious order and you
 18 ship it anyway and you don't report it, is
 19 that unlawful?

20 MS. HENN: Objection to form.

21 THE WITNESS: Please say that
 22 again.

23 QUESTIONS BY MR. FARRELL:

24 Q. If your system detects a
 25 suspicious order and you ship it anyway

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1 without reporting it, is that unlawful?

2 MS. HENN: Objection to form.

3 THE WITNESS: I think it
 4 depends.

5 QUESTIONS BY MR. FARRELL:

6 Q. On?

7 A. There could be a technical
 8 glitch --

9 Q. Okay.

10 A. -- or some computer error. I
 11 mean --

12 Q. I'm talking about hundreds and
 13 hundreds and hundreds of orders that are
 14 red-flagged by McKesson and shipped anyway
 15 without reporting a suspicious order.

16 The US Attorney for the
 17 Northern District of West Virginia doesn't
 18 say this was a technical glitch. He says it
 19 was a systematic failure by your company to
 20 abide by West Virginia law -- or federal law.

21 You paid a record fine, and
 22 you're disavowing the underlying conduct
 23 today?

24 MS. HENN: Objection to form.

25 THE WITNESS: I'm just trying

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1 to communicate that our system that
 2 was designed to detect suspicious
 3 orders using the concept of thresholds
 4 blocked all of the -- blocked those
 5 suspicious orders.

6 We recognize that and
 7 acknowledge that it may not have
 8 picked up on all of the suspicious
 9 orders and...

10 MR. FARRELL: One more and
 11 we'll take a quick break.

12 MS. HENN: If it's okay, I'd
 13 like to take it now. It's been now an
 14 hour and 15 minutes. It's pretty
 15 tiring to be a witness. So if we
 16 could just take a five-minute break,
 17 that would be great.

18 MR. FARRELL: Okay.

19 MS. HENN: Thank you.

20 VIDEOGRAPHER: The time is 4:29
 21 p.m. We're going off the record.
 22 (Off the record at 4:29 p.m.)

23 VIDEOGRAPHER: The time is
 24 4:45 p.m. We're back on the record.

25 MR. FARRELL: Thank you.

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| <p style="text-align: right;">Page 318</p> <p>1 So we have about an hour left; 2 we've been going about -- almost six 3 hours. So by agreement we've kept the 4 deposition days to seven hours long, 5 and I'll honor that. 6 MS. HENN: More than by 7 agreement. It's also ordered by the 8 judge. 9 MR. FARRELL: No question. 10 MS. HENN: Just a slight 11 clarification. 12 MR. FARRELL: No question. 13 Seven hours of answering questions is 14 enough for anybody. 15 MS. HENN: It is. 16 MR. FARRELL: That being said, 17 I know there's a burden on travel and 18 arrangements; we have a tight 19 schedule. So what I'm going to do is 20 I'm going to finish up some topics, 21 and I'm going to state for the record 22 that I have not been able to get 23 through all of the designated topics 24 today. 25 That being said, there are some</p> | <p style="text-align: right;">Page 320</p> <p>1 Obviously, it's going to be 2 subject to the objection of your 3 lawyers, and I just wanted to place 4 that on the record. 5 QUESTIONS BY MR. FARRELL: 6 Q. Jumping in real quick, I'm not 7 going to spend a whole lot of time on this; I 8 have a very specific question. 9 Before we get into the 10 document, there's a reference in here about 11 heroin, and I just wanted to see if I could 12 cut to the chase with you. 13 A. Okay. 14 Q. As the McKesson corporate 15 representative, do you acknowledge that abuse 16 of prescription opium pills is a gateway to 17 the initiation of heroin? 18 MS. HENN: Objection to form. 19 Outside the scope. 20 THE WITNESS: Based on 21 everything that I've read and in the 22 media and statistics and discussion, I 23 would agree -- agree to that. 24 QUESTIONS BY MR. FARRELL: 25 Q. If you abuse prescription</p> |
| <p style="text-align: right;">Page 319</p> <p>1 additional topics that you were not 2 designated for. There's essentially 3 two notices. 4 So what we're -- what I'm going 5 to do is recommend that I finish up 6 the topics that I want to get to, and 7 then tomorrow is your fact deposition. 8 And what we'll do is work out with 9 counsel if there are any of these 10 questions that can be answered in 11 writing to avoid you having to come 12 back and testify on things that can be 13 answered. 14 And then in addition, there are 15 records and there are -- there is 16 transactional data historically and 17 suspicious order report historically 18 that have not been disclosed yet 19 because of our tight schedules that 20 I'll -- I will be going to ask -- 21 eventually to ask for some additional 22 time from you to finish the stuff we 23 didn't get to finish and to ask 24 questions about documents that have 25 not been disclosed yet.</p> | <p style="text-align: right;">Page 321</p> <p>1 opiates, the CDC says that you're 40 times 2 more likely to initiate heroin use. 3 Does McKesson acknowledge 4 that -- that prescription opiate pill abuse 5 is a driving factor in the heroin epidemic 6 we're also experiencing? 7 MS. HENN: Objection to form. 8 Outside the scope. 9 THE WITNESS: Yeah, it's a 10 factor. 11 QUESTIONS BY MR. FARRELL: 12 Q. That was easy. 13 A. Yeah. 14 Q. All right. Back to this amicus 15 business. 16 (McKesson-Hartle Exhibit 38 17 marked for identification.) 18 QUESTIONS BY MR. FARRELL: 19 Q. I'm going to mark as 20 Exhibit 38, it's 2016_04_04. This is another 21 amicus brief. This one is Masters 22 Pharmaceutical. 23 Does McKesson acknowledge that 24 in 2016 when this amicus brief was submitted 25 that it was still on the executive committee</p> |

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|---|---|
| <p style="text-align: right;">Page 322</p> <p>1 of HDMA?</p> <p>2 MS. HENN: Objection to form.</p> <p>3 Outside the scope.</p> <p>4 THE WITNESS: I can't speak to</p> <p>5 that. If I saw a list of who was on</p> <p>6 the executive committee...</p> <p>7 (McKesson-Hartle Exhibit 39</p> <p>8 marked for identification.)</p> <p>9 QUESTIONS BY MR. FARRELL:</p> <p>10 Q. Fair enough. Exhibit 39,</p> <p>11 2016_04_05, the Wayback Machine.</p> <p>12 So looking at the Exhibit 39,</p> <p>13 can you acknowledge that McKesson was on the</p> <p>14 executive board of HDMA --</p> <p>15 A. Yes.</p> <p>16 Q. -- at the time that this amicus</p> <p>17 brief was submitted?</p> <p>18 A. Yes.</p> <p>19 Q. Have you had a chance to review</p> <p>20 the amicus brief?</p> <p>21 A. I had a chance to look at some</p> <p>22 of the highlighted sections.</p> <p>23 Q. So let's go to 2016_04_04,</p> <p>24 page 5.</p> <p>25 A. Page 5.</p> | <p style="text-align: right;">Page 324</p> <p>1 QUESTIONS BY MR. FARRELL:</p> <p>2 Q. You're stumbling toward it.</p> <p>3 A. Yeah.</p> <p>4 Q. Let's go to page 6, a little</p> <p>5 more direct. The second highlighted</p> <p>6 provision: "As the final order in this case</p> <p>7 underscores, however, DEA now appears to have</p> <p>8 changed its position to require that</p> <p>9 distributors not only report suspicious</p> <p>10 orders but investigate and halt suspicious</p> <p>11 orders."</p> <p>12 This is a 2016 document by your</p> <p>13 trade organization, of which McKesson sits on</p> <p>14 the executive board, and its telling the DC</p> <p>15 Circuit Court of Appeals that it does not</p> <p>16 have a duty to investigate and halt</p> <p>17 suspicious orders.</p> <p>18 Does McKesson validate this</p> <p>19 position?</p> <p>20 MS. HENN: Objection to form.</p> <p>21 THE WITNESS: Can you rephrase</p> <p>22 that for me?</p> <p>23 QUESTIONS BY MR. FARRELL:</p> <p>24 Q. Yeah.</p> <p>25 In 2016, your trade</p> |
| <p style="text-align: right;">Page 323</p> <p>1 Q. Down the right-hand side, you</p> <p>2 can see two-thirds of the way down it starts,</p> <p>3 "DEA." The one below that. Yeah.</p> <p>4 "DEA has required distributors</p> <p>5 not only to report suspicious orders but to</p> <p>6 investigate orders by interrogating</p> <p>7 pharmacies and physicians and take action to</p> <p>8 halt suspicious orders before they are</p> <p>9 filled. Those added obligations would</p> <p>10 significantly expand a report-only duty of</p> <p>11 distributors under the long-standing</p> <p>12 regulatory scheme and impose impractical</p> <p>13 obligations on distributors."</p> <p>14 Is that McKesson's position?</p> <p>15 MS. HENN: Objection to form.</p> <p>16 Outside the scope.</p> <p>17 THE WITNESS: Obviously we're</p> <p>18 part of the organization. In parts,</p> <p>19 you know, I agree with the added --</p> <p>20 what it would -- you know, the added</p> <p>21 responsibility or time that it would</p> <p>22 take to -- you know, to investigate</p> <p>23 each order.</p> <p>24 I don't know if I'm answering</p> <p>25 your question, but...</p> | <p style="text-align: right;">Page 325</p> <p>1 organization is telling the second highest</p> <p>2 court in the land, the DC Circuit Court of</p> <p>3 Appeals, that the DEA is now requiring them</p> <p>4 to investigate and halt suspicious orders.</p> <p>5 Haven't we agreed that's been</p> <p>6 the duty since 1971?</p> <p>7 MS. HENN: Objection to form.</p> <p>8 Outside the scope.</p> <p>9 QUESTIONS BY MR. FARRELL:</p> <p>10 Q. Tough position to defend, isn't</p> <p>11 it?</p> <p>12 MS. HENN: Same objections.</p> <p>13 THE WITNESS: You know, again,</p> <p>14 I -- I recognize that other</p> <p>15 distributors have different systems</p> <p>16 and have worked with DEA over the</p> <p>17 years on different methodologies,</p> <p>18 whether it's a threshold to block it</p> <p>19 or it's a hold and investigate and</p> <p>20 then block it. And so, you know, I</p> <p>21 recognize that.</p> <p>22 QUESTIONS BY MR. FARRELL:</p> <p>23 Q. You recognize this position is</p> <p>24 problematic given your experience, McKesson</p> <p>25 Corporation, with the DEA?</p> |

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1 MS. HENN: Objection to form.
2 THE WITNESS: I recognize that
3 I'm sure there's lots of disagreements
4 about this.
5 QUESTIONS BY MR. FARRELL:
6 Q. Yeah.
7 But we're still trying to
8 figure out from internal communications
9 whether or not McKesson signed off on this
10 brief.
11 Are you aware of whether or not
12 they signed off on this?
13 MS. HENN: Objection to form.
14 THE WITNESS: I don't -- I am
15 not aware of the process that goes
16 into signing off on these briefs and
17 what that specific looks like. I know
18 how trade organizations work and how
19 they get to a point of consensus.
20 QUESTIONS BY MR. FARRELL:
21 Q. Let me ask you in a different
22 way.
23 We talked about the original
24 enactment of the Controlled Substances Act
25 where the penalty for engaging in unlawful

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1 conduct should be prohibitive.
2 Do you remember talking about
3 that this morning?
4 A. I do.
5 Q. And so in 2008, McKesson
6 Corporation paid \$13 million, and in 2017,
7 McKesson paid \$150 million.
8 What would happen in today's
9 world if McKesson went to the DEA and said,
10 "We don't have a duty to investigate and halt
11 suspicious orders"? What do you reckon would
12 happen then?
13 MS. HENN: Objection to form.
14 Outside the scope.
15 THE WITNESS: I'm not sure
16 exactly what would happen, but they
17 wouldn't be thrilled.
18 QUESTIONS BY MR. FARRELL:
19 Q. So what do you think the fine
20 will be next time?
21 A. I can't speculate what it would
22 be. It depends on the facts and
23 circumstances and...
24 Q. So just simply stated, sitting
25 here today, McKesson Corporation, do you

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1 accept or reject the position your trade
2 organization is taking regarding the
3 interpretation of the shipping requirement
4 and reporting requirement?
5 MS. HENN: Objection to form.
6 Outside the scope.
7 THE WITNESS: I apologize. Can
8 you ask -- ask me again or rephrase?
9 Do we accept --
10 QUESTIONS BY MR. FARRELL:
11 Q. Yeah.
12 The sentence you see up there
13 on the screen --
14 A. Yeah.
15 Q. -- submitted by your trade
16 organization to which McKesson sits as an
17 executive board member, this is a position in
18 a legal document submitted to the second
19 highest court in the United States of
20 America.
21 Sitting here today, does
22 McKesson Corporation accept or reject this
23 position?
24 MS. HENN: Objection to form.
25 Outside the scope.

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1 THE WITNESS: I'd say we accept
2 this -- accept this --
3 QUESTIONS BY MR. FARRELL:
4 Q. You accept --
5 A. -- as part of that
6 organization.
7 Q. What is that?
8 A. As being part of that
9 organization.
10 Q. So your position today is
11 McKesson does not have a duty to investigate
12 and halt suspicious orders?
13 MS. HENN: Objection to form.
14 QUESTIONS BY MR. FARRELL:
15 Q. You're in a tough spot here.
16 A. I can tell you what our program
17 does, right? We halt -- we block suspicious
18 orders.
19 Q. All right. So let's go
20 further. Page 8. "The 2006 letter from Joe
21 Rannazzisi fails to explain how the statutory
22 command of the US Code 823 Section E, a
23 command that the Attorney General consider
24 when adjudicating an application for
25 registration of the applicant's maintenance

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1 of effective controls against diversion" --
2 MS. HENN: I'm sorry, you're on
3 page 8. I believe the witness is on
4 page 9.
5 THE WITNESS: Oh, excuse me.
6 Sorry. I was figuring that out when I
7 looked up there.
8 QUESTIONS BY MR. FARRELL:
9 Q. I'm sorry.
10 A. No, that's me.
11 Q. Basically, the position in this
12 brief is they're trying to figure out how in
13 the world that 2006 letter became a command
14 to distributors to engage in due diligence
15 and avoid filling suspicious orders.
16 MS. HENN: Objection to form.
17 QUESTIONS BY MR. FARRELL:
18 Q. How can you defend this
19 position, knowing that Masters Pharmaceutical
20 opinion that was released rejected in its
21 entirety this position?
22 So what I'm really trying to
23 figure out is whether McKesson has been so
24 intransigent that it continues to pay fines
25 to the DEA fighting its interpretation of the

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1 federal regulations until such time as the DC
2 Circuit Court of Appeals told them so.
3 MS. HENN: Objection to form.
4 MR. FARRELL: Terrible
5 question?
6 QUESTIONS BY MR. FARRELL:
7 Q. You get the gist of what I'm
8 asking you?
9 A. Can you ask it in a different
10 way?
11 Q. Yeah.
12 This appears to say that
13 McKesson does not have a duty to engage in
14 due diligence, nor does it need to avoid
15 filling suspicious orders.
16 Is that your position sitting
17 here today?
18 MS. HENN: Objection to form.
19 QUESTIONS BY MR. FARRELL:
20 Q. "You can't make me," is that
21 the position McKesson is taking?
22 MS. HENN: Objection to form.
23 QUESTIONS BY MR. FARRELL:
24 Q. I promise I'll quit if you just
25 simply say that this position here is

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1 nonsense.
2 MS. HENN: Objection to form.
3 THE WITNESS: I can say -- I
4 can't say that it's nonsense. I'm not
5 sure how to answer this one
6 specifically.
7 QUESTIONS BY MR. FARRELL:
8 Q. Go to page Bates stamp 9.
9 "Nothing in the federal regulations requires
10 distributors to investigate the legitimacy of
11 orders or to halt shipments of any orders
12 deemed to be suspicious."
13 Does McKesson disavow this
14 statement or agree with it?
15 MS. HENN: Objection to form.
16 THE WITNESS: You know, I do
17 think the language of the regulations,
18 you know, "design and operate a system
19 to disclose suspicious orders," gets
20 interpreted in many different ways,
21 and that -- and that's how different
22 organizations, distributors, develop
23 their program.
24 QUESTIONS BY MR. FARRELL:
25 Q. Respectfully, that's how you

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1 get fined \$150 million.
2 MS. HENN: Objection to form.
3 QUESTIONS BY MR. FARRELL:
4 Q. The next sentence: "There is
5 no prohibition on shipment of suspicious
6 orders."
7 That's wrong, isn't it?
8 MS. HENN: Objection to form.
9 QUESTIONS BY MR. FARRELL:
10 Q. Make it easier. Let's go to
11 page 12.
12 "DEA's regulations had sensibly
13 imposed a duty on distributors simply to
14 report suspicious orders, but left it to DEA
15 and its agents to investigate and halt
16 suspicious orders."
17 Nonsense or not nonsense?
18 MS. HENN: Objection to form.
19 QUESTIONS BY MR. FARRELL:
20 Q. Or no comment? I'm giving you
21 an out.
22 A. I would say no comment. I'm
23 not sure how to answer that specifically.
24 Q. Well, the answer should be
25 someone needs to call HDMA and figure out why

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1 they're taking nonsense positions, but I'll
 2 leave that to somebody else.
 3 All right. Homestretch. Some
 4 toys. As many at this table probably know,
 5 I'm the ARCOS nerd.
 6 You're familiar with ARCOS?
 7 A. I'm familiar with what it is,
 8 yep.
 9 Q. I'm the guy that's been banging
 10 away trying to get access to ARCOS for the
 11 better part of a year and a half, and I got
 12 some.
 13 Now, what this is is the
 14 transactions by every distributor in the
 15 country between 2006 and 2014, and it's
 16 related to Cuyahoga and Summit County. Now,
 17 we also have the rest of the country, so I'm
 18 able to determine national averages, state
 19 averages and county averages for every
 20 distributor, including McKesson. But we're
 21 not going to get into all of that today
 22 because what I really need is I need the
 23 transactional data dating back to 1996. I'm
 24 missing a decade. I have '06 to 2014.
 25 Last week, July 25th, your

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1 counsel provided a spreadsheet that gave us
 2 2006 to 2018. All right? So we've had it
 3 for a week. I played with it a little bit.
 4 But I don't have the decade
 5 from the launch of OxyContin to 2006 yet, but
 6 I'm working on it. So one day we may come
 7 back and have to talk about this
 8 transactional data in a different context.
 9 But that being said, one of the
 10 interesting things that I did was I grabbed
 11 the data provided by your counsel, and I
 12 pulled it up and took a look at it.
 13 MR. FARRELL: Corey, can you
 14 pull that up?
 15 QUESTIONS BY MR. FARRELL:
 16 Q. Now, the first thing I want you
 17 to note is this is highly confidential.
 18 Nobody in here is allowed to talk about it
 19 outside this room.
 20 And it's MCKMDL00478913.
 21 MR. FARRELL: Is that right?
 22 MS. HENN: I see
 23 MCKMDL00478913. That may be the same.
 24 QUESTIONS BY MR. FARRELL:
 25 Q. Okay. Can either you or your

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1 counsel confirm that this is the complete
 2 transactional data for McKesson in Cuyahoga
 3 and Summit counties between 2006 and 2018?
 4 MS. HENN: Object to form.
 5 Go ahead.
 6 THE WITNESS: I wasn't involved
 7 in pulling it, so I can't -- without
 8 seeing, I can't confirm that it's
 9 everything.
 10 MR. FARRELL: Yeah, it's really
 11 a question for your counsel, but I'm
 12 not allowed to put her under oath, so
 13 I'm hoping she'll volunteer.
 14 MS. HENN: That's my
 15 understanding, but I'm not the person
 16 who is most knowledgeable about this,
 17 so you should ask one of my
 18 colleagues.
 19 QUESTIONS BY MR. FARRELL:
 20 Q. So all of these questions are
 21 predicated on the fact that this appears to
 22 be the transactional data that was uploaded
 23 to RICOH Relativity by McKesson, but because
 24 there's no discovery document that itemizes
 25 what's what, this is all I know.

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1 Spreadsheet has up top the
 2 Bates stamp number.
 3 MR. FARRELL: And, Corey, if
 4 you'll click on the letter A, it'll
 5 tell us how many transactions there
 6 are.
 7 QUESTIONS BY MR. FARRELL:
 8 Q. There's a big number down
 9 there. Do you see that?
 10 What's that say?
 11 A. 393,479.
 12 MS. HENN: Just a question to
 13 clarify. Are we in the Summit County
 14 right now?
 15 MR. FARRELL: Oh, yeah, we're
 16 in Summit County.
 17 MS. HENN: Thank you.
 18 MR. FARRELL: We'll just stay
 19 in Summit County.
 20 MS. HENN: Okay.
 21 QUESTIONS BY MR. FARRELL:
 22 Q. All right. Now, you see up
 23 there at the very top of column H, it looks
 24 like it's January -- no, wait. What is that?
 25 Yeah, January 2, 2006.

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1 Do you see that, letter H?

2 A. I do.

3 Q. So when we're looking at that,

4 that's all I got.

5 A. Okay.

6 Q. So one of the things that we

7 can do is we can sort it. So if you go over

8 to letter M, column M, which is base code,

9 you see all those base codes?

10 A. I see those.

11 Q. Do you know what oxycodone's

12 base code is?

13 A. 9143.

14 Q. So let's sort column M by 9143

15 only.

16 So he's going to go over there

17 and click on the left, go to the data, hit

18 the filter, come on over, hit the drop-down

19 menu, close out and then hit 9143. Bam.

20 Now, if you keep scrolling over

21 to the right, what he can do is he can go

22 into column O and tabulate all of the orders

23 of oxycodone.

24 So it seems like here there are

25 119,000 orders for oxycodone in this time

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1 frame into Summit County, and the total

2 number of pills McKesson delivered into

3 Summit County was 47 million 346 -- wait.

4 47 --

5 MS. HENN: You're totaling up

6 the dose column here?

7 MR. FARRELL: Yeah.

8 QUESTIONS BY MR. FARRELL:

9 Q. 47,734,648 doses of oxycodone

10 into Summit County.

11 Is that a lot or not a lot?

12 MS. HENN: Objection to form.

13 THE WITNESS: I have to

14 understand the number of pharmacies,

15 the number of -- you know, it's a

16 large number in and of itself, but I'd

17 need to understand how many customers

18 is that, how many pharmacies is that.

19 QUESTIONS BY MR. FARRELL:

20 Q. Summit County, Ohio. It's

21 Akron, Ohio, right?

22 A. Right.

23 Q. That seems like a big number,

24 doesn't it?

25 MS. HENN: Objection to form.

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1 THE WITNESS: Well, relative to

2 what?

3 QUESTIONS BY MR. FARRELL:

4 Q. Relative to the number of

5 people that need to be taking oxycodone

6 pills.

7 MS. HENN: Objection to form.

8 QUESTIONS BY MR. FARRELL:

9 Q. Because remember, there was a

10 period of time where there were 300,000

11 prescriptions of OxyContin, and then -- in

12 '96, and then by 2001 there were 6 million,

13 right?

14 So when we get the data for the

15 first ten years, we're going to see a

16 progression of the number of pills being

17 delivered. Okay?

18 So one of the things that I'm

19 going to have you do is we're able to do some

20 analysis with the ARCOS data.

21 MR. FARRELL: So, Corey, if

22 you'll bring up Summit County PDF.

23 MS. HENN: Do you have a

24 document that we can look at? No?

25 MR. FARRELL: Not yet, no.

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1 QUESTIONS BY MR. FARRELL:

2 Q. This is our initial assessment

3 between 2006 and 2014 of the top pharmacies

4 in Summit County by volume.

5 MS. HENN: By volume of?

6 MR. FARRELL: Pills of

7 hydrocodone and oxycodone.

8 QUESTIONS BY MR. FARRELL:

9 Q. So if you scroll to the very

10 next page, you're going to see this is what

11 we kind of generate. You'll see the black

12 line is the national level, the red line is

13 the state level, the purple line is the

14 county level. And this is Summit County, and

15 this is both hydrocodone and oxycodone.

16 And sometimes these

17 fluctuations make sense because under your

18 business model sometimes you lose accounts,

19 sometimes you gain accounts. But in essence,

20 you see all way over at the far right-hand

21 side where the big spike comes in? That's

22 probably the reclassification of hydrocodone

23 combination products from three down to two,

24 which I'm assuming means that McKesson picked

25 up the Rite Aid contract.

| | |
|--|--|
| <p style="text-align: right;">Page 342</p> <p>1 MS. HENN: Counsel, just -- I 2 just want to interpose really quickly. 3 We would like this in the record with 4 an exhibit number, at least maybe the 5 version you have. I think that's 6 going to be necessary to understand 7 the deposition transcript and required 8 by the protocol. 9 MR. FARRELL: That's fair 10 enough. 11 MS. HENN: But I don't want to 12 interrupt you. Please continue. 13 QUESTIONS BY MR. FARRELL: 14 Q. So now what I'm going to do is 15 I'm going to -- we're going -- -- 16 A. Can I answer the question that 17 you had before -- 18 Q. Yeah. 19 A. -- about the Rite Aid piece? 20 Q. Yeah. 21 A. Because I think there's two 22 dynamics related to that time frame. One is 23 the up-scheduling of hydrocodone, moving it 24 from a III to a II, which happened in the 25 fall of 2014 --</p> | <p style="text-align: right;">Page 344</p> <p>1 A. That's part of the due 2 diligence process. 3 Q. Now let's go to page 8. This 4 is where we're going to kind of nail in a 5 little bit so you can see where I'm coming 6 from. 7 This is oxy -- wait, that's not 8 even true. That's a bad one. I don't want 9 to go to 8. I want to go to 10. 10 This is oxycodone only for Rite 11 Aid Store Number 3151. 12 Do you see that? 13 A. I see that. 14 Q. Do you see anywhere on this 15 chart a monthly order of unusual size? 16 MS. HENN: Object to form. 17 THE WITNESS: These are monthly 18 totals. 19 QUESTIONS BY MR. FARRELL: 20 Q. Yes. 21 A. Right. I don't have the full 22 context of this picture, and an example -- 23 Q. Fair enough. 24 A. -- I don't know -- there are 25 examples where acquisitions of other</p> |
| <p style="text-align: right;">Page 343</p> <p>1 Q. Right. 2 A. -- September-ish, October-ish 3 somewhere in there. Additionally, with Rite 4 Aid specifically, that was them moving out of 5 their warehouse business to us during that 6 same time frame. 7 So there's a couple of factors 8 in there that are going to impact those, and 9 we'd need to see the full context of. 10 Q. Yes, we would, wouldn't we? 11 A. Yeah. 12 Q. The full context is necessary 13 to understand this picture, don't you think? 14 A. And when I say "full context," 15 I mean there are noncontrols, too, so we 16 understand how big these pharmacies are, what 17 type of ratios these are to the total 18 picture. 19 Q. That's called due diligence. 20 MS. HENN: Objection to form. 21 QUESTIONS BY MR. FARRELL: 22 Q. Right? 23 A. That being -- looking at a 24 percentage like that? 25 Q. Yeah.</p> | <p style="text-align: right;">Page 345</p> <p>1 pharmacies, growth in noncontrolled, growth 2 in all the total business. So for me to 3 answer that, I would need to understand more. 4 Q. So looking at this table -- it 5 goes back to January of 2006 -- how many 6 months exceeded 8,000? 7 A. It looks like all of them. 8 Q. So based upon what you 9 understand of Section 55 and the Lifestyle 10 Control Drug Monitoring Program and then the 11 CSMP, you would expect there to be a block on 12 orders greater than \$8,000 {sic} unless 13 somebody at McKesson did due diligence to 14 raise the limit? 8,000 doses. 15 MS. HENN: Objection to form. 16 THE WITNESS: I'm trying to 17 acclimate myself to the time -- the 18 timeline here for a second. 19 QUESTIONS BY MR. FARRELL: 20 Q. Well, it shouldn't matter, 21 because it doesn't matter what time frame 22 we're talking about. There's not a single 23 order that is below the threshold of 8,000. 24 So let's just take one 25 particular month. Let's look at May of 2011,</p> |

| | |
|---|--|
| <p style="text-align: right;">Page 346</p> <p>1 which is the tallest spike of 60,000 pills. 2 That's -- 60,000 is more than 8,000? 3 A. It is. And so to -- when the 4 thresholds were implemented as part of the 5 CSMP in 2008, there was a level setting, 6 resetting, of thresholds. So you had 7 existing customers, and there was the -- a 8 process by which those monthly thresholds 9 were set. So it doesn't mean that every 10 threshold beyond, you know, April of 2008 is 11 at 8,000. They were customized based on due 12 diligence and use of data. 13 Q. I completely understand. 14 A. Yeah. 15 Q. What I'm asking -- that's what 16 I'm asking you to walk me through. 17 A. Okay. 18 Q. There are orders more than 19 8,000. 20 A. There are monthly totals -- 21 monthly accumulation. 22 Q. Of greater than 8,000 pills of 23 oxycodone? 24 A. Correct. 25 Q. By one pharmacy in Summit</p> | <p style="text-align: right;">Page 348</p> <p>1 A. Okay. 2 Q. Maybe somebody can testify that 3 they recall about it. 4 A. Yeah. 5 Q. So now what I want to do is now 6 that I just acclimated you to this, we're 7 going to focus on May of 2011. So let's go 8 back to the original spreadsheet for Summit 9 County transaction. 10 And what we're going to do is 11 we're going to start in column C, and we're 12 going to limit it to Rite Aid 3151. All 13 right. We've already limited the base code 14 to 9143, so now we're going to go over to the 15 billing date and we're going to limit it to 16 2011/05. 17 So he's going to type in the 18 search box 2011/05, and that's going to give 19 us all of the transactions in May of 2011. 20 A. Can I make one clarification on 21 the dates -- 22 Q. Yes. 23 A. -- for you? 24 You see two dates, column H and 25 column I.</p> |
| <p style="text-align: right;">Page 347</p> <p>1 County? 2 A. Correct. 3 Q. So we would expect, if McKesson 4 was following its own policies and 5 procedures, there to be some explanation for 6 that in the customer file? 7 MS. HENN: Objection to form. 8 THE WITNESS: Yes. 9 QUESTIONS BY MR. FARRELL: 10 Q. Because if there's not, that's 11 a problem, isn't it? 12 MS. HENN: Objection to form. 13 THE WITNESS: I wouldn't 14 classify it as a problem. It could 15 have happened and may not have been 16 documented accordingly. It doesn't 17 mean due diligence wasn't conducted. 18 QUESTIONS BY MR. FARRELL: 19 Q. It just means there's no proof 20 of it. 21 MS. HENN: Objection to form. 22 QUESTIONS BY MR. FARRELL: 23 Q. Agreed? 24 A. In writing. 25 Q. Okay. Fair enough.</p> | <p style="text-align: right;">Page 349</p> <p>1 Q. Yes. 2 A. Column H is the date that that 3 was billed. 4 Q. Yes. 5 A. Column I is the date that that 6 order was placed. 7 Q. Yes. 8 A. Bounced against our system and 9 our threshold and checked against whatever 10 threshold, whether it was -- this one is not 11 8,000, but for whatever the threshold is. 12 So if you're wanting to match 13 what happened in a particular month to a 14 particular threshold, you would have to use 15 the sales order date. 16 Q. Perfect. 17 So let's go undo column H. 18 A. Now, I will throw one other 19 piece of information out there. There's 20 other dates. There's other dates in our 21 system, so there could be a slight -- it 22 could be a margin of error with the date. 23 Q. I'll give you that. 24 A. Okay. 25 Q. So now let's go to column I,</p> |

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1 and we're going to do the same thing,
2 2011/05.

3 So now let's go over to the
4 doses, column O. Let's just take --
5 highlight the entire column of O and see what
6 it says. 62,700 doses of oxycodone. Okay?

7 So now what we're going to do
8 is go to the other spreadsheet that was given
9 to us, which is the same Bates stamp number
10 except for it's a 12 instead of a 13, I
11 think. This, without any other title,
12 appears to be the omit report and suspicious
13 order report by McKesson for Summit and
14 Cuyahoga County.

15 MR. FARRELL: Counsel?

16 MS. HENN: Again, I'm not the
17 best person to ask that question of.

18 You can ask the witness if you'd like.

19 QUESTIONS BY MR. FARRELL:

20 Q. Do you recognize this
21 spreadsheet?

22 A. Can you scroll -- scroll to the
23 right?

24 The reason I'm pausing is
25 because the way I typically look at them,

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1 there's different columns and there's things
2 that are classified in different ways, so the
3 data pulled is a little bit different.

4 Q. I imagine that you're seeing it
5 on a computer monitor, and this is probably
6 the printout of the data in Excel format.

7 A. Say that again?

8 Q. I can try.

9 A. To the best of your ability.

10 Q. You probably see this more on a
11 computer screen than on a piece of paper?

12 A. Correct.

13 Q. And so what we're doing is
14 seeing --

15 A. Right.

16 Q. -- the extraction of the data
17 from whatever program you're running.

18 A. I think this is -- I just want
19 to be sure. I know we've looked at data in
20 this format. I've seen this.

21 I believe that is the omits.

22 Q. Good.

23 Now, if we go over to column D,
24 let's make sure we put that in -- can we put
25 that in -- sort it by -- or organize it by

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1 transaction date? So you're going to have to
2 go up and hit "sort" and -- from biggest to
3 smallest. Can you do that?

4 Yeah. Like, you know, instead
5 of alphabetical order, can we just make sure
6 that that column is in -- I think if you just
7 go to column D, if you highlight column D,
8 then go to home -- can you click on the tab
9 "home" next to "file" and then go all the way
10 over to "sort" and "filter" on the far
11 right-hand side and hit -- yeah, A to Z
12 should work.

13 Well, then -- yeah, hit the
14 drop-down button. Let's just make sure we
15 have the earliest one. Yeah, 2008.

16 So this appears -- you only
17 have omit reports beginning in '08.

18 A. System-generated omit reports.

19 Q. Okay. What are the other omit
20 reports?

21 MS. HENN: Objection to form.

22 THE WITNESS: I have seen
23 examples of, as we were talking about
24 earlier, customers being reported to
25 DEA offices with attached spreadsheets

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1 and information on orders. And so I'm
2 not sure of the mechanism -- I mean,
3 those aren't in the same system that
4 these were pulled.

5 QUESTIONS BY MR. FARRELL:

6 Q. So just to be clear, you
7 understand Summit County and Cuyahoga County
8 are alleging that McKesson and others flagged
9 suspicious orders and didn't report them or
10 didn't flag suspicious orders. The whole
11 thing comes down to -- is you sold 62,000
12 doses in May of 2011 into Summit County. And
13 so when you look at this, if you could go to
14 column E, which is the reported date to the
15 DEA, you see it's blank. And as he scrolls
16 down, he's going to continue to scroll down
17 until he finds some time frame in which one
18 of these orders that got flagged by your
19 system was actually reported to the DEA.

20 So keep on going. I can tell
21 you it's 2013, the first one that pops up.

22 So it looks like August 1,
23 2013, is the first time in Summit County,
24 Ohio, that McKesson reported a suspicious
25 order to the DEA.

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1 MS. HENN: Objection.
 2 QUESTIONS BY MR. FARRELL:
 3 Q. That's what it looks like.
 4 MS. HENN: Objection to form.
 5 THE WITNESS: I know that's how
 6 that was -- that was pulled and the
 7 time frame that the blocked orders
 8 were sent, transmitted to
 9 headquarters.
 10 Prior to that, based on
 11 discussions with DEA, out of the 2008
 12 settlement, you know, there were
 13 customers -- I can't say if there were
 14 customers specifically in this county,
 15 I'm talking about in terms of, you
 16 know, the program. We know there were
 17 reports of suspicious orders, along
 18 with customers.
 19 QUESTIONS BY MR. FARRELL:
 20 Q. All right. So to be clear,
 21 right now all I can tell you is what the
 22 record is in this litigation. And on behalf
 23 of Summit County, it appears that the first
 24 suspicious order that was reported, based on
 25 the data provided by McKesson, was August 1,

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1 2013.
 2 So if you, McKesson
 3 Corporation, are aware of suspicious orders
 4 that predate this, I'd love to see them.
 5 A. Understood.
 6 Q. Now, if we take column D and we
 7 filter it with just 2011/05. So what this
 8 is, is you recall there's 62,000 pills that
 9 were distributed into Summit County in May
 10 of 2011.
 11 Remember that?
 12 A. Yes.
 13 Q. This is the omit report for the
 14 number of orders from Rite Aid 3151 that got
 15 flagged by your system.
 16 How many of those orders got
 17 reported?
 18 A. Based on the spreadsheet, none.
 19 Q. So what I'm trying to figure
 20 out is if you look at -- on May 20, it looks
 21 like your system flagged oxycodone 7.5s on
 22 the omit report. And if we go and we look,
 23 it wasn't turned in to the DEA. And when we
 24 go and we pull up the transaction data, it
 25 appeared you shipped it anyway.

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1 So assuming that fact to be
 2 true, what would we need to see in the due
 3 diligence file to justify the shipping of an
 4 order that got flagged by your omit report?
 5 MS. HENN: Objection to form.
 6 THE WITNESS: I'm trying to
 7 understand the situation. So can we
 8 talk through it again --
 9 QUESTIONS BY MR. FARRELL:
 10 Q. Yeah.
 11 A. -- in terms of the mechanics of
 12 the here?
 13 Q. So we know there were a whole
 14 bunch of transactions in May of 2011 that
 15 resulted in 62,000 pills being delivered into
 16 Summit County.
 17 A. Understood.
 18 Q. It looks like your system
 19 flagged Rite Aid 3151 for oxycodone base code
 20 9143 on May 20 but did not report it to the
 21 DEA. And I'll suggest to you, and we don't
 22 have to do it today, that if you go and look
 23 at the transactions, while these two --
 24 May 20th two oxycodone orders appear on your
 25 omit report, other oxycodone on the same day

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1 did not. And in fact, even though you
 2 flagged the May 20 order, you still sold more
 3 pills later in the month.
 4 So I'm trying to figure out
 5 what I would see in a file, what documents
 6 would I need to see to make sense of the fact
 7 that your system is only flagging a couple of
 8 the orders of 62,000, number one, and number
 9 two, make sense of how these flagged orders
 10 didn't get reported to the DEA.
 11 What documents theoretically
 12 would exist?
 13 MS. HENN: Objection to form.
 14 THE WITNESS: I'm not sure what
 15 documents specifically would exist. I
 16 think there's a couple components to
 17 this, or pieces to talk through. One
 18 of them is this time frame, 2000 --
 19 QUESTIONS BY MR. FARRELL:
 20 Q. '11.
 21 A. Correct.
 22 -- was during the time frame
 23 where post the 2008 agreement, in
 24 conversations with DEA and discussions about
 25 the fact that we were -- we were going to

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1 report customers, and suspicious orders along
 2 with that, that -- you know, there's --
 3 there's a time -- timing issue here.
 4 Q. So you understand the position
 5 about reporting suspicious customers McKesson
 6 made to the United States District Attorney
 7 in northern West Virginia and resulted in
 8 you-all getting fined 150 million. So what
 9 I'm trying to figure out is whether or not
 10 the same systemic errors were going on for --
 11 which resulted in these pills going to
 12 Cuyahoga and Summit County.
 13 Do you see where I'm going with
 14 it?
 15 MS. HENN: And, Counsel, I
 16 would just point out that he said he
 17 had a couple parts to his answer, and
 18 we need to listen to his whole answer
 19 to know what it is.
 20 Go right ahead.
 21 THE WITNESS: The other piece
 22 that I just wanted to connect -- or
 23 discuss quickly is you mentioned an
 24 order being placed the next day.
 25 That's -- that's how the model works.

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1 We had a monthly accumulation. If
 2 they placed an individual order over
 3 that amount, it omits. But if there's
 4 still room -- for example, if they
 5 have a threshold of 10,000 and they
 6 tried to place an order of 11,000 but
 7 hadn't purchased any for that month,
 8 they still have that 10,000 monthly
 9 threshold that they could order the --
 10 accumulate against the next day.
 11 So there's reasons why you may
 12 see an omit -- omitted order and a
 13 purchase the next day.
 14 QUESTIONS BY MR. FARRELL:
 15 Q. Let's go back to the other
 16 spreadsheet, which should be May of 2011.
 17 83 orders in one month for
 18 oxycodone from one pharmacy. Let's go all
 19 the way to the bottom and see what the last
 20 date is.
 21 May 26, May 26, May 25th. I
 22 mean, it looks like there's 1,800 oxy 30s on
 23 May 25th.
 24 Oxy 30s are the number one
 25 abused pill in America, and you distributed

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1 1800 of them on May 25th after your system
 2 flagged on May 20th other orders.
 3 And when you look on May 20th,
 4 there's one, two, three, four, five, six,
 5 seven different oxycodone orders, including
 6 500 oxy 80s.
 7 How is it conceivable that you
 8 were filling this many orders of oxycodone
 9 for this amount and your system not only
 10 isn't flagging all but three, but you're not
 11 reporting any of them?
 12 MS. HENN: Objection to form.
 13 THE WITNESS: I would need to
 14 see the details on this specific --
 15 I've not researched this specific
 16 pharmacy, these specific dates, these
 17 specific orders, what the thresholds
 18 are. I don't understand. I don't
 19 have any of that insight to be able to
 20 piece that together.
 21 QUESTIONS BY MR. FARRELL:
 22 Q. And I'm not expecting you to
 23 just throw it out in the middle of nowhere.
 24 A. Okay.
 25 Q. But you understand what we're

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1 doing is we're going back and trying to
 2 reconstruct what happened in Summit County,
 3 and part of the story is you sold 60,000
 4 pills to one pharmacy in one month.
 5 A. I understand that. Part of the
 6 context is the overall size of that pharmacy,
 7 not -- not specifically just including the
 8 impact of 60,000 doses but the number of
 9 prescriptions, what percentage of oxycodone
 10 is that of the total, what type of -- you
 11 know, how big is their patient population.
 12 You know, there's other factors that are
 13 helpful in understanding in putting some
 14 context around these numbers.
 15 Q. Like, for instance, is it the
 16 only pharmacy in the area?
 17 A. Maybe.
 18 Q. All right. Let's go back to
 19 the PDF --
 20 A. Maybe they have multiple
 21 long-term care or hospice facilities. I
 22 don't know until I, you know, have that
 23 information.
 24 Q. Go back to the PDF.
 25 Rite Aid. Do you see 325 East

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1 Waterloo Road, Akron, number 2 pharmacy?
 2 Look at what the number 4 one
 3 is, just right down the street.
 4 So again, I think it's worth
 5 looking into, don't you think?
 6 A. I agree. I would love to have
 7 more context and get into the details.
 8 Q. Okay. This is going to draw an
 9 objection from your counsel. What would be a
 10 reason to set a threshold for 999,999?
 11 MS. HENN: Objection to form.
 12 THE WITNESS: There are -- in
 13 the system there are subsets to base
 14 codes, and so a -- for example, 91 --
 15 91 -- 9193, which is hydrocodone, may
 16 have some subsets for reporting
 17 purposes for us. There may be a
 18 subset, and there could be one or more
 19 of these. There could be a subset for
 20 10 milligram. There could be a subset
 21 for the single entity hydrocodone.
 22 And so we can carve those out
 23 from reporting purposes. That's --
 24 the 999,999 does not mean that they
 25 can get 999,000 pills. It means that

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1 that base code does not conflict with
 2 the main parent -- what I would call a
 3 parent base code.
 4 And so it's for reporting
 5 purpose only. It has nothing to do
 6 with allowing the amount of that total
 7 base code. The parent trumps that
 8 one. It's for reporting purposes
 9 only.
 10 QUESTIONS BY MR. FARRELL:
 11 Q. Do you know how many doses
 12 McKesson distributed of oxycodone nationwide
 13 from January 1, 2006 and December 31, 2014?
 14 This is from ARCOS.
 15 A. I don't have that number.
 16 MS. HENN: Objection to form.
 17 QUESTIONS BY MR. FARRELL:
 18 Q. 9,288,258,480 doses of
 19 oxycodone nationwide. That's more than
 20 there's people in our country.
 21 Distributed 423 million
 22 oxycodone doses in the state of Ohio. That's
 23 over 119 billion milligrams of oxycodone.
 24 Do you think that's too many?
 25 MS. HENN: Objection to form.

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1 THE WITNESS: You know, I
 2 can't -- I can't say on the data and
 3 the comparison compared to -- those
 4 are data points to look at. They're
 5 big numbers, no doubt.
 6 QUESTIONS BY MR. FARRELL:
 7 Q. Do you agree that one of the
 8 foreseeable harms of engaging in unlawful
 9 conduct in the distribution of prescription
 10 opioids is diversion?
 11 MS. HENN: Objection. Form.
 12 THE WITNESS: Could you ask
 13 that again?
 14 QUESTIONS BY MR. FARRELL:
 15 Q. One of the harms --
 16 A. You said foreseeable first, but
 17 harms --
 18 Q. I'll go back and do it.
 19 Do you agree that one of the
 20 foreseeable harms of engaging in unlawful
 21 conduct in the distribution of prescription
 22 opioids is diversion?
 23 MS. HENN: Objection to form.
 24 THE WITNESS: I think it can
 25 be.

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1 QUESTIONS BY MR. FARRELL:
 2 Q. Do you agree that filling
 3 suspicious orders is a direct and proximate
 4 cause of prescription opioid abuse,
 5 addiction, morbidity and mortality?
 6 MS. HENN: Objection to form.
 7 THE WITNESS: Filling specific
 8 orders?
 9 MS. HENN: Suspicious orders is
 10 the word he used.
 11 THE WITNESS: Suspicious
 12 orders.
 13 There's a lot of reasons for --
 14 that orders may get flagged as
 15 suspicious, so I think it depends.
 16 QUESTIONS BY MR. FARRELL:
 17 Q. That's fair.
 18 A. They'll get flagged as an order
 19 of unusual size, frequency or pattern and not
 20 mean that it's suspicious or
 21 diversion-related.
 22 Q. Do you believe the prescription
 23 opiate epidemic is an immediate hazard to
 24 public health and safety?
 25 MS. HENN: Objection to form.

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1 THE WITNESS: How do you -- how
2 are you defining "immediate hazard"?
3 QUESTIONS BY MR. FARRELL:
4 Q. A hazard.
5 A. A hazard?
6 Sure.
7 MR. FARRELL: Okay. We will
8 adjourn with the reservation of rights
9 for one day, continuing the subject
10 matters that most interest the
11 plaintiffs in the MDL in the 30(b)(6)
12 notices.
13 MS. HENN: And, I mean, we will
14 object to continuing past the limit
15 set by the Court. We feel that there
16 was a lot of time today that was spent
17 asking legal questions that could have
18 been spent on topics.
19 MR. FARRELL: There was also a
20 lot of time spent reading documents
21 that were listed in my 30(b)(6).
22 MS. HENN: Documents that you
23 put in front of the witness and wanted
24 him to read.
25 But more importantly, I wanted

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1 to ask the court reporter to please
2 designate this transcript
3 provisionally highly confidential,
4 which is required under the deposition
5 protocol, and I also wanted to reserve
6 the right to read and sign.
7 I have no questions, and so I
8 think we are finished.
9 VIDEOGRAPHER: Okay. The time
10 is 5:47 p.m., July 31, 2018. Going
11 off the record completing today's
12 videotaped session.
13 (McKesson-Hartle Exhibit 40
14 marked for identification.)
15 (Deposition concluded at 5:47 p.m.)
16 -----
17
18
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24
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1 CERTIFICATE
2
3 I, CARRIE A. CAMPBELL, Registered
4 Diplomate Reporter, Certified Realtime
5 Reporter and Certified Shorthand Reporter, do
6 hereby certify that prior to the commencement
7 of the examination, Nathan J. Hartle was duly
8 sworn by me to testify to the truth, the
9 whole truth and nothing but the truth.
10 I DO FURTHER CERTIFY that the
11 foregoing is a verbatim transcript of the
12 testimony as taken stenographically by and
13 before me at the time, place and on the date
14 hereinbefore set forth, to the best of my
15 ability.
16
17 I DO FURTHER CERTIFY that I am
18 neither a relative nor employee nor attorney
19 nor counsel of any of the parties to this
20 action, and that I am neither a relative nor
21 employee of such attorney or counsel, and
22 that I am not financially interested in the
23 action.
24
25

CARRIE A. CAMPBELL,
NCRA Registered Diplomate Reporter
Certified Realtime Reporter
California Certified Shorthand
Reporter #13921
Missouri Certified Court Reporter #859
Illinois Certified Shorthand Reporter
#084-004229
Texas Certified Shorthand Reporter #9328
Kansas Certified Court Reporter #1715
Notary Public
Dated: August 3, 2018

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1 INSTRUCTIONS TO WITNESS
2
3 Please read your deposition over
4 carefully and make any necessary corrections.
5 You should state the reason in the
6 appropriate space on the errata sheet for any
7 corrections that are made.
8 After doing so, please sign the
9 errata sheet and date it. You are signing
10 same subject to the changes you have noted on
11 the errata sheet, which will be attached to
12 your deposition.
13 It is imperative that you return
14 the original errata sheet to the deposing
15 attorney within thirty (30) days of receipt
16 of the deposition transcript by you. If you
17 fail to do so, the deposition transcript may
18 be deemed to be accurate and may be used in
19 court.
20
21
22
23
24
25

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ACKNOWLEDGMENT OF DEPONENT

I, _____, do
 hereby certify that I have read the foregoing
 pages and that the same is a correct
 transcription of the answers given by me to
 the questions therein propounded, except for
 the corrections or changes in form or
 substance, if any, noted in the attached
 Errata Sheet.

 Nathan J. Hartle DATE

Subscribed and sworn to before me this
 _____ day of _____, 20 _____.
 My commission expires: _____

Notary Public

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 LAWYER'S NOTES

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 ERRATA

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